

Historic, archived document

Do not assume content reflects current scientific knowledge, policies, or practices.

ESTABLISHING ADMINISTRATIVE CONFERENCE

PLEASE RETURN TO USDA
NATIONAL AGRICULTURAL LIBRARY
NEW BRANCH, LEGISLATIVE REPORTING,
Room 117-E, Admin Bldg.
Washington, D. C. Ext. 4654

USDA
National Agricultural
Library
LEGISLATIVE REPORTING

HEARING

BEFORE

SUBCOMMITTEE NO. 3

OF THE

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH CONGRESS

SECOND SESSION

ON

S. 1664, H.R. 7200, H.R. 7201

A BILL TO PROVIDE FOR CONTINUOUS IMPROVEMENT OF
THE ADMINISTRATIVE PROCEDURES OF FEDERAL AGEN-
CIES BY CREATING AN ADMINISTRATIVE CONFERENCE
OF THE UNITED STATES, AND FOR OTHER PURPOSES

MARCH 5, 1964

Serial No. 10

Printed for the use of the Committee on the Judiciary



COMMITTEE ON THE JUDICIARY

EMANUEL CELLER, New York, *Chairman*

MICHAEL A. FEIGHAN, Ohio	WILLIAM M. McCULLOCH, Ohio
FRANK CHELF, Kentucky	WILLIAM E. MILLER, New York
EDWIN E. WILLIS, Louisiana	RICHARD H. POFF, Virginia
PETER W. RODINO, Jr., New Jersey	WILLIAM C. CRAMER, Florida
E. L. FORRESTER, Georgia	ARCH A. MOORE, Jr., West Virginia
BYRON G. ROGERS, Colorado	GEORGE MEADER, Michigan
HAROLD D. DONOHUE, Massachusetts	JOHN V. LINDSAY, New York
JACK B. BROOKS, Texas	WILLIAM T. CAHILL, New Jersey
WILLIAM M. TUCK, Virginia	GARNER E. SHRIVER, Kansas
ROBERT T. ASHMORE, South Carolina	CLARK MacGREGOR, Minnesota
JOHN DOWDY, Texas	CHARLES McC. MATHIAS, Jr., Maryland
BASIL L. WHITENER, North Carolina	JAMES E. BROMWELL, Iowa
ROLAND V. LIBONATI, Illinois	CARLETON J. KING, New York
HERMAN TOLL, Pennsylvania	PATRICK MINOR MARTIN, California
ROBERT W. KASTENMEIER, Wisconsin	
JACOB H. GILBERT, New York	
JAMES C. CORMAN, California	
WILLIAM L. ST. ONGE, Connecticut	
GEORGE F. SENNER, Jr., Arizona	
DON EDWARDS, California	

BESS E. DICK, *Staff Director*

WILLIAM R. FOLEY, *General Counsel*

WALTER M. BESTERMAN, *Legislative Assistant*

WILLIAM P. SHATTUCH, *Legislative Assistant*

CHARLES J. ZINN, *Law Revision Counsel*

MURRAY DRABKIN, *Counsel*

HERBERT FUCHS, *Counsel*

WILLIAM H. COPENHAVER, *Associate Counsel*

SUBCOMMITTEE No. 3

EDWIN E. WILLIS, Louisiana, *Chairman*

WILLIAM M. TUCK, Virginia	JOHN V. LINDSAY, New York
ROLAND V. LIBONATI, Illinois	WILLIAM T. CAHILL, New Jersey
HERMAN TOLL, Pennsylvania	CHARLES McC. MATHIAS, Jr., Maryland
ROBERT W. KASTENMEIER, Wisconsin	PATRICK MINOR MARTIN, California
WILLIAM L. ST. ONGE, Connecticut	

HERBERT FUCHS, *Counsel*

CONTENTS

Text of S. 1664, H.R. 7200, H.R. 7201-----	Page 1
Testimony of:	
Harris, the Honorable Oren, Representative in Congress from Arkansas-----	10
Pratt, John H., president of the Bar Association of the District of Columbia-----	74
Prettyman, the Honorable E. Barrett, senior circuit judge, Court of Appeals for the District of Columbia, and former chairman of temporary conferences on administrative procedure-----	22
Russell, Harold L., chairman, Special Committee on Legal Services and Procedure, American Bar Association-----	56
Seidman, Harold, Acting Assistant Director, Office of Management and Organization, Bureau of the Budget-----	85
Supplementary documents:	
Letter dated April 10, 1964, from Congressman Oren Harris-----	21
History of the Administrative Conference of the United States-----	23
Letter dated March 6, 1964, from Webster P. Maxson, Director, Office of Administrative Procedure, Department of Justice-----	49
Letter dated April 3, 1964, from Judge E. Barrett Prettyman-----	50
Article, "Progress Toward Procedural Reform," by Max D. Paglin, General Counsel, Federal Communications Commission-----	69
Letter dated March 17, 1964, from Elmer B. Staats, Deputy Director, Bureau of the Budget-----	99

ESTABLISHING ADMINISTRATIVE CONFERENCE

THURSDAY, MARCH 5, 1964

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE NO. 3 OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m. in room 346, Old House Office Building, Washington, D.C., the Honorable Roland V. Libonati presiding.

Present: Messrs. Tuck, Kastenmeier, Lindsay, and Cahill.

Also present: Herbert Fuchs, counsel; Allan Cors, associate counsel.

Mr. LIBONATI. The meeting will come to order.

The hearing on Senate bill 1664 is before Subcommittee No. 3, Judiciary Committee; also H.R. 7200 and H.R. 7201, which are companion bills.

The Honorable Oren Harris, of Arkansas, is the author of H.R. 7200 and H.R. 7201.

(The bills referred to follow:)

[S. 1664, 88th Cong., 1st sess.]

AN ACT To provide for continuous improvement of the administrative procedure of Federal agencies by creating an Administrative Conference of the United States, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Administrative Conference Act."

FINDINGS AND DECLARATION OF POLICY

SEC. 2. The Congress finds and declares that—

(a) administration of regulatory and other statutes enacted by Congress in the public interest substantially affects large numbers of private individuals and many areas of business and economic activity;

(b) the protection of public and private interests requires continuing attention to the administrative procedure of Federal agencies to insure maximum efficiency and fairness in achieving statutory objectives;

(c) responsibility for assuring fair and efficient administrative procedure is inherent in the general responsibilities of officials appointed to administer Federal statutes;

(d) experience has demonstrated that cooperative effort among Federal officials, assisted by private citizens and others whose interest, competence, and objectivity enable them to make a unique contribution, can find solutions to complex problems and achieve substantial progress in improving the effectiveness of administrative procedure; and

(e) it is the purpose of this Act to provide suitable arrangements through which Federal agencies, assisted by outside experts, may cooperatively study mutual problems, exchange information, and develop recommendations for action by proper authorities to the end that private rights may be fully protected and regulatory activities and other Federal responsibilities may be carried out expeditiously in the public interest.

DEFINITIONS

SEC. 3. As used in this Act—

(a) "Administrative program" includes any Federal function which involves protection of the public interest and the determination of rights, privileges, and obligations of private persons through rulemaking, adjudication, licensing or investigation, as those terms are used in the Administrative Procedure Act (5 U.S.C. 1001-1011).

(b) "Administrative agency" means any authority as defined by section 2(a) of the Administrative Procedure Act (5 U.S.C. 1001(a)).

(c) "Administrative procedure" means procedure used in carrying out an administrative program and shall be broadly construed to include any aspect of agency organization, procedure, or management which may affect the equitable consideration of public and private interests, the fairness of agency decisions, the speed of agency action, and the relationship of operating methods to later judicial review, but shall not be construed to include the scope of agency responsibility as established by law or matters of substantive policy committed by law to agency discretion.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

SEC. 4. (a) There is hereby established the Administrative Conference of the United States (hereinafter referred to as the "Conference").

(b) The Conference shall be composed of—

(1) a full-time Chairman, who shall be appointed for a five-year term by the President, by and with the advice and consent of the Senate. The Chairman shall receive compensation at the highest rate established by law for the chairman of an independent regulatory board or commission, and may continue to serve until his successor has been appointed and has qualified;

(2) the chairman of each independent regulatory board or commission or a person designated by such board or commission;

(3) the head of each executive department or other administrative agency which is designated by the President, or a person designated by such head of a department or agency;

(4) when authorized by the Council, one or more appointees from any such board, commission, department, or agency, designated by the department or agency head or, in the case of a board or commission, by the head of such board or commission with the approval of the board or commission;

(5) persons appointed by the President to membership upon the Council hereinafter established who are not otherwise members of the Conference; and

(6) other members in such number as will assure full representation of the viewpoints of private citizens and the utilization of diverse experience, who shall be appointed by the Chairman, with the approval of the Council, for terms of two years. Members appointed by the Chairman shall be members of the practicing bar, scholars in the field of administrative law or government, or others specially informed by knowledge and experience with respect to Federal administrative procedure.

(c) Members of the Conference other than the Chairman shall receive no compensation for service, but members appointed from outside the Federal Government shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 73b-2) for persons serving without compensation.

DUTIES AND POWERS OF THE CONFERENCE

SEC. 5. To carry out the purposes of this Act the Conference is authorized to—

(a) study the efficiency, adequacy, and fairness of the administrative procedure used by administrative agencies in carrying out administrative programs;

(b) make recommendations to administrative agencies, collectively or individually, and to the President, the Congress, or the Judicial Conference of the United States, as it deems appropriate;

(c) arrange for interchange among administrative agencies of information potentially useful in improving administrative procedure; and

(d) collect information and statistics from administrative agencies and publish such reports as it deems useful for evaluating and improving administrative procedure.

ORGANIZATION OF THE CONFERENCE

SEC. 6. (a) The membership of the Conference meeting in plenary session shall constitute the Assembly of the Conference. The Assembly shall have ultimate authority over all activities of the Conference. Specifically, it shall have power to (1) adopt such recommendations as it deems appropriate for improving administrative procedure: *Provided*, That any member or members who disagree with a recommendation adopted by the Assembly shall be accorded the privilege of entering dissenting opinions and alternative proposals in the record of Conference proceedings, and the opinions and proposals so entered shall accompany the Conference recommendation in any publication or distribution thereof; and (2) adopt bylaws and regulations not inconsistent with this Act for carrying out the functions of the Conference, including the creation of such committees as it deems necessary for the conduct of studies and the development of recommendations for consideration by the Assembly.

(b) The Conference shall include a Council composed of the Chairman of the Conference, who shall be the Chairman of the Council, and ten other members appointed by the President for three-year terms, except that the Council members initially appointed shall serve for one, two, or three years, as designated by the President, and each member may continue to serve until a successor is appointed. The Council shall have power to (1) determine the time and place of plenary sessions of the Conference and the agenda for such meetings and it shall call at least one plenary session each year; (2) propose bylaws and regulations, including rules of procedure and committee organization, for adoption by the Assembly; (3) make recommendations to the Conference or its committees upon any subject germane to the purposes of the Conference; (4) receive and consider reports and recommendations of committees of the Conference and transmit them to members of the Conference with the views and recommendations of the Council; (5) designate a member of the Council to preside at meetings of the Council in the absence or incapacity of the Chairman and Vice Chairman; (6) designate such additional officers of the Conference as it may deem desirable; (7) approve or revise the Chairman's budgetary proposals; and (8) exercise such other powers as may be delegated to it by the Assembly.

(c) The Chairman shall be the chief executive of the Conference. In that capacity he shall have power to (1) make inquiries into matters he deems important for Conference consideration, including matters proposed by persons inside or outside the Federal Government; (2) be the official spokesman for the Conference in relations with the several branches and agencies of the Federal Government and with interested organizations and individuals outside the Government, including responsibility for encouraging Federal agencies to effectuate the recommendations of the Conference; (3) request agency heads to provide information needed by the Conference, which information shall be supplied to the extent permitted by law; (4) recommend to the Council appropriate subjects for action by the Conference; (5) appoint, with the approval of the Council, members of committees authorized by the bylaws and regulations of the Conference; (6) prepare, for approval of the Council, estimates of the budgetary requirements of the Conference; (7) appoint employes, subject to the civil service and classification laws, define their duties and responsibilities, and direct and supervise their activities; (8) rent office space in the District of Columbia; (9) provide necessary services for the Assembly, the Council, and the committees of the Conference; (10) organize and direct studies ordered by the Assembly or the Council, utilizing from time to time as appropriate, experts and consultants who may be employed as authorized by section 15 of the Administrative Expenses Act of 1946, as amended (5 U.S.C. 55a), but at rates for individuals not to exceed \$100 per diem; (11) upon request of the head of any agency, furnish assistance and advice on matters of administrative procedure; and (12) exercise such additional authority as may be delegated to him by the Council or the Assembly. The Chairman shall preside at meetings of the Council and at each plenary session of the Conference, to which he shall make a full report concerning the affairs of the Conference since the last preceding plenary session. The Chairman shall, on behalf of the Conference, transmit to the President and the Congress an annual report and such interim reports as he deems desirable; such reports shall set forth the compliance of the agencies with the recommendations of the Conference.

(d) The President may designate a member of the Council as Vice Chairman, who shall serve as Chairman in the event of a vacancy in that office or in the absence or incapacity of the Chairman.

(e) Each member of the Conference shall participate in his individual capacity and not as a representative of any governmental or nongovernmental organization. Members of the Conference who are not regular Federal officials or personnel shall be special Government employees for the purposes of sections 203, 205, 207, 208, and 209 of title 18, United States Code.

APPROPRIATIONS

SEC. 7. There are hereby authorized to be appropriated such sums as may be necessary to accomplish the purposes of this Act.

Passed the Senate October 30 (legislative day, October 22), 1963.

Attest:

FELTON M. JOHNSON, *Secretary*.

[H.R. 7200, 88th Cong., 1st sess.]

A BILL To provide for continuous improvement of the administrative procedure of Federal agencies by creating an Administrative Conference of the United States, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Administrative Conference Act".

FINDINGS AND DECLARATION OF POLICY

SEC. 2. The Congress finds and declares that—

(a) administration of regulatory and other statutes enacted by Congress in the public interest substantially affects large numbers of private individuals and many areas of business and economic activity;

(b) the protection of public and private interests requires continuing attention to the administrative procedure of Federal agencies to insure maximum efficiency and fairness in achieving statutory objectives;

(c) the diversity of Federal activities frequently precludes the establishment by statute of administrative procedure which would be generally suitable for use by all agencies;

(d) responsibility for assuring fair and efficient administrative procedure is inherent in the general responsibilities of officials appointed to administer Federal statutes;

(e) experience has demonstrated that cooperative effort among Federal officials, assisted by private citizens and others whose interest, competence, and objectivity enable them to make a unique contribution, can find solutions to complex problems and achieve substantial progress in improving the effectiveness of administrative procedure; and

(f) it is the purpose of this Act to provide suitable arrangements through which Federal agencies, assisted by outside experts, may cooperatively study mutual problems, exchange information, and develop recommendations for action by proper authorities to the end that private rights may be fully protected and regulatory activities and other Federal responsibilities may be carried out expeditiously in the public interest.

DEFINITIONS

SEC. 3. As used in this Act—

(a) "Administrative program" includes any Federal function which involves protection of the public interest and the determination of rights, privileges, and obligations of private persons through "rulemaking" or "adjudication" as those terms are defined in section 2 of the Administrative Procedure Act (5 U.S.C. 1001), except that it shall not include—

(1) any function or matter specified in section 4 (1) or (2) of the Act except to the extent that such function or matter consists of proceedings and decisionmaking required to be conducted in conformity with sections 7 and 8 of the Act or the imposition of penalties on private persons through agency action not subject to sections 7 and 8; or

(2) any matter specified in section 5 (1), (3), (5), and (6) of the Act.

(b) "Administrative agency" includes all executive departments and any other Federal agency, including a constituent agency of an executive department, which carries out an administrative program.

(c) "Administrative procedure" means procedure used in carrying out an administrative program and shall be broadly construed to include any aspect of agency organization, procedure, or management which may affect the equitable consideration of public and private interests, the fairness of agency decisions, the speed of agency action, and the relationship of operating methods to later judicial review, but shall not be construed to include the scope of agency responsibility as established by law or matters of substantive policy committed by law to agency discretion.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

SEC. 4. (a) There is hereby established the Administrative Conference of the United States (hereinafter referred to as the "Conference").

(b) The Conference shall be composed preponderantly of Federal officials and personnel, including—

(1) a full-time Chairman, who shall be appointed for a five-year term by the President, by and with the advice and consent of the Senate. The Chairman shall receive compensation at the highest rate established by law for the chairman of an independent regulatory board or commission, and may continue to serve until his successor has been appointed and has qualified;

(2) the chairman of each independent regulatory board or commission;

(3) the head of each executive department or other administrative agency which is designated by the President;

(4) when authorized by the Council, and appointee from any such board, commission, department, or agency, designated by the department or agency head or, in the case of a board or commission, by the Chairman with the approval of the board or commission;

(5) persons appointed by the President to membership upon the Council hereinafter established who are not otherwise members of the Conference; and

(6) other members in such number as will assure adequate representation of the viewpoints of private citizens and the utilization of diverse experience, who shall be appointed by the Chairman, with the approval of the Council, for terms of two years. Members appointed by the Chairman shall be members of the practicing bar, scholars in the field of administrative law or government, or others specially informed by knowledge and experience with respect to Federal administrative procedure.

(c) Each member under paragraphs (b) (2) and (b) (3), above, may designate an alternate member to represent him, as occasion requires, in plenary sessions or other activities of the Conference. The alternate member shall have all the obligations and privileges of full membership in the Conference on such occasions.

(d) Members of the Conference other than the Chairman shall receive no compensation for service, but members appointed from outside the Federal Government shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 73b-2) for persons serving without compensation.

DUTIES AND POWERS OF THE CONFERENCE

SEC. 5. To carry out the purposes of this Act the Conference is authorized to—

(a) study the efficiency, adequacy, and fairness of the administrative procedure used by administrative agencies in carrying out administrative programs;

(b) make recommendations to administrative agencies, collectively or individually, and to the President, the Congress, or the Judicial Conference of the United States, as it deems appropriate;

(c) arrange for interchange among administrative agencies of information potentially useful in improving administrative procedure; and

(d) collect from administrative agencies and publish such reports of operating statistics as it deems useful for evaluating and improving administrative procedure.

ORGANIZATION OF THE CONFERENCE

SEC. 6. (a) The membership of the Conference meeting in plenary session shall constitute the Assembly of the Conference. The Assembly shall have

ultimate authority over all activities of the Conference. Specifically, it shall have power to (1) adopt such recommendations as it deems appropriate for improving administrative procedure: *Provided*, That any member or members who disagree with a recommendation adopted by the Assembly shall be accorded the privilege of entering dissenting opinions and alternative proposals in the record of Conference proceedings, and the opinions and proposals so entered shall accompany the Conference recommendation in any publication or distribution thereof; and (2) adopt bylaws and regulations not inconsistent with this Act for carrying out the functions of the Conference, including the creation of such committees as it deems necessary for the conduct of studies and the development of recommendations for consideration by the Assembly.

(b) The Conference shall include a Council composed preponderantly of Federal officials and personnel. The Council shall consist of the Chairman of the Conference, who shall be the Chairman of the Council, and ten other members appointed by the President for three-year terms, except that the Council members initially appointed shall serve for one, two, or three years, as designated by the President, and each member may continue to serve until a successor is appointed. The Council shall have power to (1) determine the time and place of plenary sessions of the Conference and the agenda for such meetings; (2) propose bylaws and regulations, including rules of procedure and committee organization, for adoption by the Assembly; (3) make recommendations to the Conference or its committees upon any subject germane to the purposes of the Conference; (4) receive and consider reports and recommendations of committees of the Conference and transmit them to members of the Conference with the views and recommendations of the Council; (5) designate a member of the Council to preside at meetings of the Council in the absence or incapacity of the Chairman and Vice Chairman; (6) designate such additional officers of the Conference as it may deem desirable; (7) approve or revise the Chairman's budgetary proposals; and (8) exercise such other powers as may be delegated to it by the Assembly.

(c) The Chairman shall be the chief executive of the Conference. In that capacity he shall have power to (1) make preliminary inquiries into matters he deems important for Conference consideration, including matters proposed by persons inside or outside the Federal Government; (2) be the official spokesman for the Conference in relations with the several branches and agencies of the Federal Government and with interested organizations and individuals outside the Government, including responsibility for encouraging Federal agencies to effectuate the recommendations of the Conference; (3) request agency heads to provide information needed by the Conference, which information shall be supplied to the extent permitted by law or agency regulations; (4) recommend to the Council appropriate subjects for action by the Conference; (5) appoint, with the approval of the Council, members of committees authorized by the bylaws and regulations of the Conference; (6) prepare, for approval of the Council, estimates of the budgetary requirements of the Conference; (7) appoint employees, subject to the civil service and classification laws, define their duties and responsibilities, and direct and supervise their activities; (8) rent office space in the District of Columbia; (9) provide necessary services for the Assembly, the Council, and the committees of the Conference; (10) organize and direct studies ordered by the Assembly or the Council, utilizing from time to time, as appropriate, experts and consultants, who may be employed as authorized by section 15 of the Administrative Expenses Act of 1946, as amended (5 U.S.C. 55a), but at rates for individuals not to exceed \$100 per diem; (11) upon request of the head of any agency, furnish assistance and advice on matters of administrative procedure; and (12) exercise such additional authority as may be delegated to him by the Council or the Assembly. The Chairman shall preside at meetings of the Council and at each plenary session of the Conference, to which he shall make a full report concerning the affairs of the Conference since the last preceding plenary session. The Chairman shall, on behalf of the Conference, transmit to the President and the Congress an annual report and such interim reports as he deems desirable.

(d) The President may designate a member of the Council as Vice Chairman, who shall serve as Chairman in the event of a vacancy in that office or in the absence or incapacity of the Chairman.

APPROPRIATIONS

SEC. 7. There are hereby authorized to be appropriated such sums as may be necessary to accomplish the purposes of this Act.

[H.R. 7201, 88th Cong., 1st sess.]

A BILL To provide for continuous improvement of the administrative procedure of Federal agencies by creating an Administrative Conference of the United States, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Administrative Conference Act of 1963".

FINDINGS AND DECLARATION OF POLICY

SEC. 2. The Congress finds and declares that—

(a) Administration of regulatory and other statutes enacted by Congress in the public interest substantially affects large numbers of private individuals and many areas of business and economic activity;

(b) The protection of public and private interests requires continuous attention to the administrative procedure of Federal agencies to insure maximum efficiency and fairness in achieving statutory objectives;

(c) Responsibility for assuring fair and efficient administrative procedure is inherent in the general responsibilities of officials appointed to administer Federal statutes;

(d) Experience has demonstrated that cooperative effort among Federal officials, private citizens and others whose interest, competence, and objectivity enable them to make a valuable contribution, can find solutions to complex problems and achieve substantial progress in improving the effectiveness of administrative procedure; and

(e) It is the purpose of this Act to provide suitable arrangements through which Federal officials and other persons as herein provided may cooperatively study mutual problems, exchange information, and develop recommendations for action by proper authorities to the end that private rights may be fully protected and regulatory activities and other Federal responsibilities may be carried out expeditiously in the public interest.

DEFINITIONS

SEC. 3. As used in this Act—

(a) "Administrative program" means any agency proceeding or action as defined by section 1001(g) of chapter 19 of title 5 of the United States Code.

(b) "Agency" means any Federal agency, including a constituent agency of an executive department, which carries out an administrative program.

(c) "Administrative procedure" means procedure used in carrying out an administrative program, and shall be broadly construed to include any aspect of agency organization, procedure, and management which may affect the equitable consideration of public and private interests, the fairness of agency decisions, the speed of agency action, and the relationship of operating methods to later judicial review, but shall not be construed to include the scope of substantive agency responsibility as established by law or matters of substantive policy committed by law to agency discretion.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

SEC. 4. (a) There is hereby established the Administrative Conference of the United States (hereinafter referred to as the "Conference").

(b) The Conference shall be composed of a Chairman, a Council, and an Assembly, constituted in the manner hereinafter provided. The Conference shall maintain an office at the seat of government.

SEC. 5. The Chairman shall be appointed by the President with the advice and consent of the Senate to serve for a term of five years and thereafter until his successor shall be appointed and has qualified. The Chairman shall receive

compensation at the highest rate established by law for an Under Secretary of an executive department of the Federal Government.

SEC. 6. The Council shall consist of the Chairman of the Conference (who shall be the Chairman of the Council) and ten other members appointed by the President. The membership of the Council shall reflect diverse experience in the field of administrative procedure and shall include at least five members of the bar in private practice. Not more than six members of the Council shall be members of the same political party. The members of the Council (other than the Chairman) shall be appointed for terms of three calendar years except that the members initially appointed shall serve for one, two, or three years as designated by the President. Each of their successors shall be appointed for a term of three years from the date of the expiration of the term for which his predecessor was appointed, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of such predecessor. Each member of the Council shall serve until his successor is appointed and qualified. Any vacancy on the Council shall be filled by the President by appointment from among persons eligible for original appointment to the vacant position.

SEC. 7. (a) The Assembly shall consist of the members of the Council and persons from the agencies and members of the practicing bar, scholars in the field of administrative law and government, and others specially informed by knowledge and experience with respect to Federal administrative practice and procedure. The composition of the Assembly and its total number shall be determined from time to time by the Council: *Provided*, That members from outside the Federal Government shall be appointed in such numbers as will assure adequate representation of the public and reflection of diverse experience, but in no event shall more than 50 per centum of the membership be members of the bar in private practice nor shall more than 50 per centum of the membership be persons from the agencies. The Council shall designate the agencies from which members shall be named and the number of such members from each, having due regard for the extent of the administrative programs of the respective agencies. The head of the agency or, if the agency is a board or commission, its chairman with the approval of the board or commission, shall name a member or members from such agency. Other members (except as provided in paragraph (c) hereof) shall be named by the Council. Each member of the Assembly shall participate in his individual capacity and not as a representative of any governmental or nongovernmental organization. All members of the Assembly except the members of the Council shall be appointed for terms of two calendar years, except that the terms of initial members of the Assembly shall end December 31, 1964.

(b) A member of the Assembly designated from an agency shall become ineligible to continue as a member of the Assembly under that designation if he leaves the service of that agency. A member not from an agency shall become ineligible to continue as a member of the Assembly in that capacity if he enters the regular service of the Federal Government. If a member resigns, becomes ineligible, or is otherwise unable to continue as a member of the Assembly, the appointing authority that named him shall designate a successor for the remainder of his term.

(c) There shall be appointed from each Congress as members of the Assembly (1) by the President of the Senate, three Members of the Senate and as alternates three members of the staffs of committees of the Senate, and (2) by the Speaker of the House of Representatives, three Members of the House of Representatives and as alternates three members of the staffs of committees of the House of Representatives. The Chief Justice of the United States shall be invited by the Council to appoint from the Judicial Conference of the United States three members of the Assembly and three alternate members.

DUTIES AND POWERS OF THE CONFERENCE

SEC. 8. To carry out the purposes of this Act the Conference shall—

(a) study the efficiency, adequacy, and fairness of the administrative procedure used by Federal agencies to carry out administrative programs in the public interest and to determine the rights, privileges, and obligations of private persons;

(b) make recommendations to the agencies, collectively or individually, and to the President, the Congress, or the Judicial Conference of the United States, as it deems appropriate, including recommendations for preventing

undue delay and expense and unduly long records and for establishing insofar as practicable uniform procedures and rules of practice;

(c) arrange for interchange among the agencies of information which may be useful in improving administrative procedure;

(d) collect information from the agencies and publish such reports as it deems useful for evaluation and improvement of administrative procedure; and

(e) foster cooperative efforts among the agencies and members of the bar to bring about improvements in administrative procedure.

OPERATION OF THE CONFERENCE

SEC. 9. The Chairman shall be the chief executive and administrative officer of the Conference and devote his full time and energies to the duties of his office. He shall—

(a) encourage and stimulate agency action to effectuate the purposes and functions of the Conference and to implement its recommendations;

(b) be the spokesman for and representative of the Conference in relations with the several branches and agencies of the Federal Government and with persons and organizations outside the Federal Government;

(c) make inquiries into matters for Conference consideration, including matters proposed by persons inside or outside the Federal Government and recommend appropriate subjects for action by the Conference;

(d) obtain from the agencies information needed by the Conference or the Chairman in effectuating the purposes and functions of the Conference, which information shall be supplied by the agencies upon his request;

(e) upon request of any agency, furnish assistance and advice on matters of administrative procedure;

(f) prepare for the approval of the Council estimates of the budgetary requirements of the Conference;

(g) appoint employees, subject to the civil service and classification laws, define their duties and responsibilities, and direct and supervise their activities;

(h) rent office space at the seat of government;

(i) provide necessary services for the Assembly, the Council, and committees of the Conference;

(j) organize and direct studies for Conference purposes, utilizing from time to time, as appropriate, experts and consultants, who may be employed as authorized by section 15 of the Administrative Expenses Act of 1946, as amended (5 U.S.C. 55a), but at rates for individuals not to exceed \$100 per diem; and

(k) exercise such additional authority as may be delegated to him by the Council or the Assembly.

SEC. 10. The Council shall:

(a) determine the time and agenda of sessions of the Assembly;

(b) propose bylaws and regulations, including rules of procedure and committee organization, for adoption by the Assembly;

(c) appoint members of committees authorized by the bylaws and regulations of the Assembly;

(d) make recommendations to the Assembly or its committees on any subject germane to the purpose of the Conference;

(e) receive and consider reports and recommendations of committees of the Assembly and transmit them to the Assembly with the views and recommendations of the Council;

(f) designate a member of the Council as Vice Chairman to act in the absence or incapacity of the Chairman;

(g) designate such additional officers of the Conference as it may deem desirable;

(h) approve or revise the Chairman's budgetary proposals; and

(i) exercise such other powers as may be delegated to it by the Assembly.

SEC. 11. (a) The Assembly shall have ultimate authority over the activities of the Conference, but this shall not be construed to limit the independent powers granted the Chairman under this Act. It shall: (1) adopt such recommendations as it deem appropriate for improving administrative procedure; and (2) adopt bylaws and regulations not inconsistent with this Act for carrying out the functions of the Conference, including the creation of such committees as it deems

necessary for the conduct of studies and the development of recommendations for consideration by the Conference. The Conference shall not entertain requests to study bills pending in Congress but this shall not be deemed to limit the subject matter of any study or report of the Conference.

(b) The members of the Assembly shall meet in plenary session at the seat of Government at least once each year and at such other times as may be determined by the Council. At meetings of the Assembly, the Chairman shall preside but shall have no vote unless the Assembly shall be equally divided. At each plenary session the Chairman shall make a full report concerning the affairs of the Conference since the last preceding plenary session.

(c) The Chairman shall transmit an annual report of the Conference to the President and the Congress and may submit supplemental and interim reports to the President, the Congress, the Judicial Conference, or any agency.

(d) Any member of the Conference may express to the Congress, the President, or others his views concerning matters within the cognizance of the Conference.

GENERAL

SEC. 12. Membership in or service to the Conference by persons outside the Federal Government, whether compensated or not, shall not be considered as service or employment bringing such individuals within the provisions of sections 203, 205, 207, 208, or 209 of chapter 11 of title 18 of the United States Code.

SEC. 13. (a) All members of the Conference other than the Chairman shall serve without compensation but shall be reimbursed for actual expenses incurred in connection with the functions of the Conference;

(b) The Chairman may make such expenditures (including expenditures for rent and personal services, office employees, travel, law books, periodicals, books of reference, printing and binding, and studies or investigations) as may be necessary for the execution of his functions and the functions of the Council and the Conference, out of appropriations made from time to time by Congress. Expenditures of the Chairman, the Council, and the Conference shall be allowed and paid only on presentation of itemized vouchers therefor approved by the Chairman or such other person or persons as may be designated for that purpose by the Chairman with the approval of the Council;

(c) There are hereby authorized to be appropriated such sums as may be necessary to accomplish the purposes of this Act.

Mr. LIBONATI. The distinguished Congressman from Arkansas, we are very proud to have you before the committee to give your version of the analysis of your bill and the purposes for which it is intended.

We welcome you before the committee.

STATEMENT OF HON. OREN HARRIS, MEMBER OF CONGRESS FROM ARKANSAS

Mr. HARRIS. Mr. Chairman, members of the committee, first—and off the record.

(Discussion off the record.)

Mr. HARRIS. I appreciate the very able membership of this great committee and the capability of the members of this committee.

Mr. LIBONATI. I think you will find we Members of Congress recognize your importance, contributing to the activities of this bill.

You need not apologize for that importance; you have earned it.

Mr. HARRIS. Thank you very much. Let me say I consider it a great honor and high privilege to appear before this distinguished committee.

I am especially pleased to be here today in the interest of a cause which I have felt very deeply about for a long time.

I want to compliment this committee for scheduling hearings on this legislation. I think this legislation is long overdue.

Now, having said that, let me give you a little background of my interest in this field.

(At this point, the Honorable Edwin E. Willis, chairman of the subcommittee, assumed the chair.)

Mr. TUCK. You may take your seat if you prefer.

Mr. HARRIS. Thank you.

In the first place, six of the major regulatory agencies of the U.S. Government come under the jurisdiction of my Committee on Interstate and Foreign Commerce. Even though they are the largest independent regulatory agencies, there are many other agencies of the Government that have similar responsibilities and that are equally interested in this legislation.

I do not have to tell you that our Government is getting so big and these regulatory agencies so powerful, and their responsibilities so great that they constitute a great challenge to democratic institutions.

I say to you in all frankness, if you want to tackle a real problem, you just tackle a problem before one of these great regulatory agencies. Now, for that reason, the procedures which these agencies must follow are terribly important.

There are so many people who represent so many groups and organizations before these agencies that it becomes a big operation.

The American Bar Association has recognized this problem for a long time. People within the agencies themselves have recognized this for a long time. The Federal Bar Association has recognized it for a long time. And because of this general interest, President Eisenhower set up the Administrative Conference.

Judge Prettyman, who is in my judgment one of the outstanding men in the history of this country and certainly in our generation, accepted the tremendous responsibility as Chairman of this Conference.

Well, the Conference was a little slow in getting off the ground. There were so many things to be done. The late Speaker Rayburn mentioned to me on the floor of the House in 1957 that many things had been brought to his attention that needed looking into with regard to these great and powerful agencies of the Government, and he requested that my committee look into some of their operations.

Well, that is all history and you know something about it. The question of proper procedures and ex parte representations became one of the great and important subjects of inquiry.

The procedures before these Commissions is a highly complicated technical problem but we had to try to do something about these procedures.

Delays were so common within some of these agencies and their administrative procedures were so tangled that we needed some forum where the experts could get together and have some way of ironing these things out. They would come together in an effort to agree on some concrete reforms.

So here is a little background that I have not talked about before, but since the statute of limitations has about run out, I will give you the benefit of some background information. When we began our investigation the chairmen of several of these agencies got together, and they decided to see whether there was a little better approach to this thing so that they might be relieved of some of the sting that was

coming. I do not say this in any boastful way at all. That investigation was one of the hardest jobs I ever tackled in my life. We suffered many pains and aches, and the pressures were great. But the agencies were feeling the sting as well as the members of our committee and the people who were practicing before the agencies.

Anyway, the chairmen of these agencies decided that there might be a way to help relieve the situation some and out of this effort came the pitched ball, Administrative Conference to deal with agency procedures.

I was designated as congressional member of it. It was a temporary Conference. Judge Prettyman was the Chairman.

The conference met from time to time trying to carry out the mandate which it was given in the Executive order of 1953.

In the meantime, we had a bill, H.R. 14, which dealt directly with one phase of the agency procedures, and that was the problem of ex parte contacts. We tried to develop that.

I could go on and elaborate extensively, but I think it would be unnecessarily taking your time. Anyway, the temporary Administrative Conference under the direction of Judge Prettyman recommended legislation providing for a permanent conference similar to the Judicial Conference.

Well, I was quite impressed with this proposal. Our investigative subcommittee, after years of study developed specific proposals to deal with the ex parte problem and we asked the temporary conference for its recommendations in this regard. They did a fine job in that respect, and I thank them for it.

I do not think that a permanent Administrative Conference, to be successful, should be set up by Executive order. Such a setup cannot be nearly as effective as an Administrative Procedures Conference that would be set up by law. And the bills which I introduced propose to do just that. The Conference would be the forum where people from all phases of administrative procedures from Government and from professions, can come together, and attempt to iron these things out. In my judgment we have reached the time now when our Government has become so big that it is important to have the right kind of forum set up in order that they can make appropriate recommendations to you and me and the Congress to enact.

So that is what this is on. I introduced all together four bills. I introduced the bill recommended by the Administrative Conference. I introduced the bill recommended by the American Bar Association. These bills do not differ too greatly.

There is some difference with reference to the organization of the Conference. The ABA proposal, I would say in my judgment, is a little more loose in that respect than the other proposal.

The Senate, in dealing with this subject, as I understand was trying to resolve some of the differences between the two bills.

That was the approach they tried.

I introduced two other bills similar to these two before you, but they are applicable only to the agencies that come under the jurisdiction of our own committee.

I told your distinguished chairman, Mr. Celler, a year ago—I have forgotten how long it has been since I introduced this; it was I think last year, June of last year—I told him how important it was and that

I preferred your committee to set up such a Conference that would be applicable throughout the Government and not be limited just to the six major regulatory agencies over which my committee has jurisdiction.

And I had a very favorable response from him, I might say. He assured me that he would cooperate and, when you could get to it, that he would try to see that favorable action would be taken.

So that gives you just an off-the-cuff explanation of my activities and interest in this legislation.

I am going to ask you to let me include in the record a brief statement in which I discuss the bills in a little bit more detail. I know there are others here from the bar and from the agencies involved. They are going to testify, and I trust they will concur in what I have said.

There will be some more detailed explanation and maybe a slight difference of opinion here and there.

I might say one thing. I would like to see the bill, H.R. 7200, seriously considered by this committee. It contains the recommendations of the Administrative Conference.

There are slight differences between the bills in the makeup of the conference. I am not too concerned about the differences though. Frankly either approach would be perfectly all right with me, but I do think it should be an effective organization, and in order to be effective I do think there should be somebody with enough authority to run it who can do a job and is not just a bookkeeper. That is the way I see it.

So I want to say again I commend this committee for taking up this legislation. I believe it would be one of the most far-reaching and desirable things that could happen in the field of administrative procedure. The operation of these most complicated, highly important, and large agencies affect the lives and welfare of the American people.

Mr. WILLIS. Your statement will be incorporated at this point if that is your wish.

Mr. HARRIS. If I may.

(The statement referred to follows:)

STATEMENT OF REPRESENTATIVE OREN HARRIS (DEMOCRAT, OF ARKANSAS)

Mr. Chairman and members of the committee. I am appearing this morning before your great committee at the invitation of the chairman to testify in support of H.R. 7200 and H.R. 7201 which I introduced, and S. 1664, a similar bill, which was passed toward the end of the first session of this Congress by the other body. I am very much gratified that your committee is holding hearings on this important legislation.

The purpose of the three bills is to establish a permanent Administrative Conference of the United States.

On June 24, 1963, I introduce H.R. 7200 which incorporates essentially the recommendations submitted by the temporary Administrative Conference which was created on April 13, 1961, by Executive Order No. 10934.

H.R. 7201 incorporates the recommendations of the American Bar Association on the same subject. H.R. 7201 differs from H.R. 7200 primarily with regard to the membership of the Conference and the responsibilities of the Director of that Conference.

On the same day I introduced two similar bills also providing for the establishment of a permanent Administrative Conference, but limited to the six independent regulatory agencies which come within the legislative jurisdiction of the Committee on Interstate and Foreign Commerce; namely, the Civil Aeronautics

Board, the Federal Communications Commission, Federal Power Commission, Federal Trade Commission, Interstate Commerce Commission, and the Securities and Exchange Commission.

At the time of the introduction of these bills I expressed the hope that the great Committee on the Judiciary would give favorable consideration to H.R. 7200 and H.R. 7201. However, I stated further that I considered the establishment of a permanent Administrative Conference so important that I would prefer seeing such Conference established on a limited basis rather than having no permanent Conference at all. Therefore, I introduced H.R. 7202 and H.R. 7203, having in mind that such a Conference should deal at least with the problems common to the independent regulatory agencies which come within the jurisdiction of our Committee on Interstate and Foreign Commerce.

Mr. Chairman and members of the committee, I feel that the temporary Administrative Conference did a very worthwhile job indeed in dealing with the problems with which it was able to deal within the short period of its existence. However, the problems facing the administrative agencies, particularly the independent regulatory agencies, are very real and many proposals have been made for improving the organization and procedures of these agencies. It is my conviction that the proposals for improvement of the administrative process can best be handled if Federal officials responsible in these areas have an opportunity to cooperate with each other and with private citizens whose knowledge of the field enables them to make unique contributions to complex administrative and regulatory problems.

I am glad to see that the legislation is specific to preclude consideration by the Conference of "matters of substantive policy committed by law to agency discretion" (S. 1664, sec. 3, p. 4, lines 1 and 2). Matters of substantive policy should be considered by the individual agencies and by the appropriate congressional committees which have legislative jurisdiction with regard to such agencies.

In earlier years, some Members of Congress expressed apprehension that an Administrative Conference might assume the role of a czar and exercise oversight functions which ought to be reserved to the Congress.

I am glad to see that the bill is specific in this respect too and makes clear that the function of the Conference is purely advisory.

Mr. Chairman and members of the committee, the differences between the bill passed by the other body, S. 1664, and the two bills which I introduced, are slight indeed. I introduced two bills, H.R. 7200 and H.R. 7201, because I feel very strongly that large numbers of private individuals in many areas of business and economic activities can greatly benefit from the studies and proposals of the Administrative Conference. The protection of public and private interests requires continuing attention to the administrative procedure of Federal agencies in order to assure maximum efficiency and fairness. The enactment of the legislation before your committee is long overdue and I trust you will give careful consideration to all of the bills before you. I want to stress, however, that I am much more concerned with the prompt enactment of one of these bills rather than having enactment delayed by disagreement over details. Under these circumstances, the committee may well desire to act on the bill already passed by the other body and thus expedite the enactment of this important legislation.

Again, I want to commend the chairman and members of this committee for holding hearings on these important proposals and I want to express my thanks for permitting me to appear before you this morning.

Mr. WILLIS. May I ask you a couple of questions?

Mr. HARRIS. Yes, indeed.

Mr. WILLIS. Reading from your bill, page 2, H.R. 7200, it says:

It is the purpose of this act to provide suitable arrangements through which Federal agencies, assisted by outside experts, may cooperatively study mutual problems, exchange information, for action by proper authorities to the end that private rights may be fully protected and regulatory activities and other Federal responsibilities may be carried out expeditiously in the public interest.

Now, what do these recommendations lead to?

Let us be a little more specific. Does that mean they have authority to come out with new approaches? What does this do, for instance, to the Administrative Procedure Act? Or will you go into it a little bit?

Mr. HARRIS. Yes; I shall be glad to.

Let me say all three bills provide the same thing. There is no controversy or no difference at all.

No, it does not; it does not affect the Administrative Procedure Act differently from other laws. What it does is that it provides a forum for all of these different viewpoints to be brought together in order to come up with recommendations.

Now, those recommendations may come to you, this committee, to amend the Administrative Procedure Act. They may come to my committee to amend certain of the laws or acts affecting the agencies under our jurisdiction.

It may go to these agencies as a recommendation for rulemaking procedures, and so forth and so on. But they are only recommendations.

I think the best way I can express it is that it would be something like the Judicial Conference in studying new and improved methods by which administrative responsibilities of these agencies can be carried out.

Mr. WILLIS. And you think it would be too soon and premature to undertake an act to define the duties in more specific terms?

Mr. HARRIS. I think we would be talking—

Mr. WILLIS. In other words, it talks in terms of meetings together, exchange of information, and developing recommendations for action by proper authorities. Do you think that is specific enough?

You would not want to guess what they might come out with and therefore you would not want to spell it out any more than that?

Mr. HARRIS. I think if we were to try to bind the Conference, we would place some restrictions on the freedom that it otherwise would exercise. In that case I do not believe it could be as effective as we would hope it would be. It should make not only recommendations but should suggest guidelines for the responsible people in the agencies which then would adopt specific procedures, rules, regulations, and laws themselves.

Mr. WILLIS. But you do envisage that as a result of these studies, meetings, and cooperative efforts and exchange of information will come recommendations?

Mr. HARRIS. Yes.

Mr. WILLIS. For improvement; and those recommendations may be made to certain agencies within their present rulemaking structure, to improve procedures or perhaps recommend amendments to the Administrative Procedures Act, or perhaps to one or more committees of Congress if it is to be a broad approach, in which case it would probably come to this committee.

Mr. HARRIS. I think it would be a tremendous help to us and, therefore, a benefit to the public.

You know, Mr. Chairman, under our procedure, the way we operate now, we get too often proposals that are advocated by special interests. Some group that we may have the greatest admiration and respect for and that has the highest integrity comes forward with particular suggestions and recommendations for procedural changes.

Now, a lot of misunderstanding develops over the suggestions that come from these special interest groups. The Conference would afford an opportunity to weed out a lot of those proposals and furnish some objective information and recommendations.

I think it would bring about a better understanding among the agencies themselves on procedures. It could be of tremendous value in providing guidelines, and the staff members and members of these agencies would get a lot of benefit out of it. And you know, yourself, one of the problems that we have here is the contention, which has been made time after time after time, that the staffs of these agencies are running the show down there.

A lot of these things I think could be brought to the forefront with such a conference of this kind.

Mr. WILLIS. Well, take an agency over which your committee has jurisdiction, any one in your mind; could you give us who are not informed in detail on the ramifications of their hearing procedures, or licensing procedures, or whatever power they exercise over the public, where these recommendations could come into play, and what are some of the probable pitfalls that could be involved?

Mr. HARRIS. All right, let us take for example one of the most difficult questions, the widely discussed question of conflict of interest, code of ethics, and ex parte contacts.

Now, we got deeply involved in that, as you know, in our hearings in 1959. We had recommendations. We had proposed legislation on it. We held hearings on those. We reported them. But there is one thing we did find out. The problems in these agencies differ in this respect. However, there are certain problems that are of mutual concern and interest.

Now, in my judgment these agencies could be brought together in this Conference here and all of them would meet and they would have a forum in which they could iron out these things. They might be able to work out uniform procedures by this method that would be helpful to all.

And they could then determine those things that are not common to them and leave those to the individual agencies.

Now, when it is worked out in this method, the Federal bar, the practitioners before the agencies, the people who are interested in it, they know what it is about and they can contribute to this. In my judgment we would have lot better procedures within the agencies.

I think it would strengthen the Administrative Procedures Act, which I have criticized some as you know, because sometimes it becomes a lawyer's haven, the way it has been. I do not have anything against lawyers—I am one myself, and I am for them—but we run into interminable delays in which years and years will pass before they could ever conclude a matter of great importance. The length of these proceedings in some of the agencies give rise to ex parte presentations.

A tremendous amount of good could come out of something like this, in my judgment.

Mr. WILLIS. And the Conference, I assume, would have authority to go into whether judicial review is ample at present?

Mr. HARRIS. That could be one of the items on the agenda for the Conference to discuss. We have, I might say as the gentleman well knows, from time to time, bill after bill after bill providing judicial review, since you mentioned that; and some laws are set up one way and some in another way. A man who is trying to follow the whole thing finds he is completely lost. Our friend Joe O'Hara, who gave

a lot of his time and study in this particular field—he was here for 18 years, and on my own committee, and a good lawyer—made that one of his specialties. Every time we had a new bill, regardless of what was in it, that question of judicial review would be discussed over and over again.

Mr. WILLIS. Governor Tuck?

Mr. TUCK. I have no questions.

Mr. LIBONATI. Yes.

Congressman, as a matter of fact, you had an example the other day of a very sensitive situation with the FCC on the question of delegation of power on the part of the Congress as assumed by the FCC, which necessitated positive action on the part of your committee to pass a bill negating that power they claimed they had under the act, the original act of 1934, as I recall.

This type of conference would eliminate any such questions between the agency and the legislative body as we do with the Judicial Conference in introducing bills here which are submitted to the Judicial Conference for consideration and study. Is not that one of the purposes of this legislation?

Mr. HARRIS. I would not want to contend that it would eliminate that situation, because it has something to do with substantive rather than procedural questions.

Mr. LIBONATI. I do not mean to eliminate.

Mr. HARRIS. But as an example, this would provide a forum for an entire industry to raise procedural questions. These could be placed on the agenda of the Conference, and all of these people on all sides could discuss these questions and see whether or not there should be some recommendations with reference to changes in these procedures.

Mr. LIBONATI. That is what I mean.

Mr. HARRIS. Yes.

Mr. LIBONATI. This would be a functioning unit for creating a line of demarcation even between the agencies and the powers on the part of the legislative government, not to interfere with them in their procedures which they have under their rules if we vest them with those signal powers; whereas under the present circumstances, it becomes incumbent upon the chairman—as you are the chairman of your subcommittee—to bring about legislation to negate and prevent the use of a power (which you presented in your arguments) never delegated, nor was any contemplation by the Congress of delegating such powers to an agency in the Government to set up rates, and so forth, for limiting advertising, and limiting the cost of advertising, going into that level of operation.

Am I correct in that?

Mr. HARRIS. Yes, sir; what I tried to explain, this would set up what I think is a most worthy organization in which these matters could be thrashed out in a way that would bring about a better understanding of the problems and more effective operation of these agencies.

Mr. LIBONATI. I thank you.

Mr. KASTENMEIER. Mr. Chairman.

I appreciate the area that the gentleman from Arkansas has brought us into. This is undoubtedly going to be one of the most important bills our committee has ever gone into.

For the purpose of legislative identification here at the outset of these hearings, you refer to four bills, two of which are before this committee apparently, two of which were considered before your own committee, but, because they dealt with specific agencies, were not referred to this committee. Is that correct?

Mr. HARRIS. The ones that were referred to my committee are applicable only to the six major regulatory agencies that come under the jurisdiction of my committee.

At the same time, I recognize the better part of wisdom if this proposition could be made applicable across the board, and, therefore, the other bills come under the jurisdiction of this committee.

Mr. KASTENMEIER. We have three bills before us; one Senate bill, H.R. 7200, and H.R. 7201.

H.R. 7200, as best you know, embodies the recommendations of the Administrative Procedure Conference?

Mr. HARRIS. That is true.

Mr. KASTENMEIER. I note you also stated that these bills have the support of your committee.

Mr. HARRIS. Well, our committee would be favorable to either of these three bills. But when you start getting down to the finer points, we do think that H.R. 7200 would provide a little more effective organization.

Mr. KASTENMEIER. And the H.R. 7201?

Mr. HARRIS. Gives the chairman a little bit more authority, and stiffens with regard to the composition of the Conference. Those are the differences.

Mr. KASTENMEIER. H.R. 7201 is the American Bar Association's proposal?

Mr. HARRIS. That is true. But there are a lot of similarities between the proposals.

Mr. KASTENMEIER. As far as you know, this will not disturb, nor is it designed to disturb, the existing balance or imbalance between the regulatory agencies, administrative agencies, and special interests they seek to regulate?

Once adopted this would not disturb this existing relation?

Mr. HARRIS. This takes no power or jurisdiction away from any administrative agency or regulatory agency.

Mr. KASTENMEIER. Can we assume, then, that both the interests that the regulatory agencies regulate and the agencies themselves—both, let us say, support one of the two bills?

Mr. HARRIS. Well, now, you are getting a little bit beyond me. I do not know what the position of the agencies is, as close as I have been to these major ones. But I think they generally are favorable to some such conference.

I do believe you will have this Conference as time goes on. I have not discussed it with any of them; they may contradict me, I do not know—I believe the agencies might be quite concerned that the Conference would not be composed of as many Government people as they would like to see. There has been some indication that the American Bar Association is fearful that it might get loaded down with the Government people. But I do not believe that is so. I believe what the judge, Judge Prettyman, had in mind, and what President Eisenhower had in mind, and what President Kennedy had

in mind when I talked to him about it, when he extended the Conference, was that it should be an overall balanced organization set up to fill a vacuum, which, in my judgment, is needed now since the Government has gotten so big, and the agency procedures so important and complex.

Mr. KASTENMEIER. Thank you, Congressman.

Mr. HARRIS. I am for 7200, if you want an answer to that question you and Mr. Libonati were talking about.

Mr. LIBONATI. Half a million dollars, that is more than the Judicial Council costs. We would rather—

Mr. HARRIS. There has been some speculation on what it would cost. Some people say \$250,000, others say less than half a million. I think that would depend upon the extent of the organization, how often it would meet, what kind of a staff it would have, and just how vigorous it would be in its activity.

Mr. LIBONATI. I thought this was going to be a conference; not a convention, say to Miami. I thought they would meet here where all of the agencies are quartered, and use the agencies' moneys, if any, for travel, expenses.

Mr. HARRIS. Well, we talked about this before. If I recall correctly, it was decided that this organization should not depend on how any one of the agencies of the Government felt toward it, and how forcefully any agency went out for funds to be appropriated through that agency to contribute to this organization.

I think there is something to it, because I do not think we ought to base it on the fact that the ICC is going to have so much money in which it gives to it—the FTC, the Maritime Commission, or whatever it might be. I think what the Congress and what Judge Prettyman had in mind, and the recommendation came from that organization, that we recognize the importance of it and not have any particular agency or group have a stranglehold on any phase of it.

Mr. LIBONATI. Thank you, Mr. Chairman.

Mr. LINDSAY. Mr. Chairman, I have a few technical questions. The size of the Assembly is contemplated as being what?

Mr. HARRIS. I beg your pardon?

Mr. LINDSAY. How big is the Assembly?

Mr. HARRIS. What is it, 68, 70? What is it?

Mr. LIBONATI. Ten.

Mr. LINDSAY. No, that is the Council.

Mr. LIBONATI. The other is a flexible number.

Mr. LINDSAY. What does the bill provide for in respect of the size of the Assembly?

Mr. HARRIS. The Assembly itself, I think, would be composed of around 80 to 90 members, if I remember.

Mr. LINDSAY. Is that provided in the legislation, Mr. Chairman?

Mr. HARRIS. Let me check. It has been so long since I have gone over these.

Mr. LINDSAY. We can pass that for the moment if you wish and we will get to it perhaps later on when one of the other witnesses goes into it.

Mr. HARRIS. As I recall, the legislation does not nail down the specific number of the membership. But in the recommendations of the temporary conference which was established by Executive order of

the President, it seems to me the number was around 80 or 90 people, something like that.

Mr. LINDSAY. Well, the reason I asked the question is because, on page 7 of H.R. 7200 and page 10 of H.R. 7201, it is provided that the Assembly shall have ultimate authority over the Conference, so the Assembly is the boss.

Mr. HARRIS. Yes.

Mr. LINDSAY. So it is quite important to know how big it is and who selects the members of the Assembly.

Who would select the members of the Assembly? The members of the Assembly would be picked by the Congress?

Mr. HARRIS. No, no. The members of the Assembly would be selected—so many from Government, so many from the practitioners—

Mr. LINDSAY. Who would make that decision? Why would choose and where is it provided in the bill?

Mr. HARRIS. Page 4, section 4, H.R. 7200, states:

The Conference shall be composed preponderantly of Federal officials and personnel, including:

A full-time Chairman, who shall be appointed for a five-year term by the President, by and with the advice of the Senate. The Chairman shall receive compensation at the highest rate established by law for the chairman of an independent regulatory board or commission, and may continue to serve until his successor has been appointed and has qualified;

The chairman of each independent regulatory board or commission;

The head of each executive department or other administrative agency—

and so on and so on, on down through that page.

And there is a provision in H.R. 7201 whereby certain Members of the Congress—

Mr. LINDSAY. Yes.

Mr. HARRIS. I must say it has been some time since I have analyzed this.

Mr. LINDSAY. Let me ask you about the definition of agencies that are covered by the bill. I take it from the definition that I read on page 3 of H.R. 7200 that all executive departments are included?

Mr. HARRIS. Are included.

Mr. LINDSAY. Are included.

Mr. HARRIS. Yes. [Reading:]

“Administrative agency” includes all executive departments and any other Federal agency, including a constituent agency of an executive department, which carries out an administrative program.

Mr. LINDSAY. The jurisdiction to make recommendations by this Conference would include, for example, the procedures used in the issuance of passports by the State Department, the procedures of the Immigration and Naturalization Service of the Justice Department, and all other procedural subjects or questions that come before agencies of that kind? Would this include all of the reviewing procedures in the Pentagon? For example, the awarding of contracts?

Mr. HARRIS. Conceivably, yes.

Mr. LINDSAY. It would include all quasi-judicial matters?

Mr. HARRIS. Oh, yes, indeed.

Mr. LINDSAY. Of administrative agencies. How about court-martials and other quasi-judicial matters in the Pentagon; Board of Military Appeals, for example, would that be covered?

Mr. HARRIS. I would assume that would be a part of the executive department.

Mr. LINDSAY. It is within the Pentagon.

Mr. HARRIS. Yes.

Mr. LINDSAY. That is part of the Defense Department.

Mr. HARRIS. Yes. So it could not be ruled out.

Mr. LINDSAY. How about jurisdictional questions which involve jurisdictional questions between executive agencies; for example, a dispute between the Antitrust Division of the Justice Department and the FAA as to whether or not mergers are properly the concern of one or the other or both, which is something which has long haunted the bar? Now, this being a conference which is supposed to promote efficiency in Government procedures, would that kind of thing be covered?

Mr. HARRIS. It was intended for the Conference to be involved in substantive matters.

Mr. LINDSAY. So it would not cover the area of what executive department has jurisdiction over what subject?

Mr. HARRIS. That was not the intention and I think this will be developed during the course of the hearings.

Mr. LINDSAY. Thank you very much, Mr. Chairman, I do appreciate your testimony very much.

Thank you, Mr. Chairman, for your very enlightened presentation.

Mr. HARRIS. Thank you.

Mr. WILLIS. As usual, you are very convincing.

(Subsequently, Chairman Harris submitted the following letter:)

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., April 10, 1964.

Hon. EDWIN E. WILLIS,
Chairman, Subcommittee No. 3, House Judiciary Committee,
Washington, D.C.

DEAR COLLEAGUE: You will recall that you were kind enough to offer me an opportunity to testify on March 5, 1964, before your subcommittee on several bills providing for the establishment of a permanent administrative Conference. In the course of the hearings and subsequent thereto, I was advised that the subcommittee was concerned in securing further details with regard to (1) the size of the proposed Conference, (2) the size of its full-time staff, and (3) the estimated cost of the proposed activity for the purpose of enabling the subcommittee to consider suitable amendments incorporating limitations not now contained in these bills.

In an attempt to be helpful to the subcommittee, I contacted Judge Prettyman and requested him to review past experience regarding these items. Insofar as this past experience constitutes a guide it would seem that the following limitations might be considered:

(1) Size of proposed Conference: not to exceed 91 persons, consisting of 30 members plus a Chairman of the Conference, and 10 Council members.

(2) Size of full-time staff: a professional staff not to exceed five (an executive director and four attorneys) plus four secretaries, and one clerk.

(3) Estimated cost of proposed activity: not to exceed \$260,000.

This information was taken from a memorandum prepared by Judge Prettyman and I understand that you have been furnished a copy of this memorandum by Judge Prettyman. Of course, you do appreciate that these proposed limitations are best estimates based on past experience, and I am not suggesting in any way that your subcommittee may not desire on the basis of other considerations to insert different limitations in the legislation which you have now under consideration.

Sincerely yours,

OREN HARRIS, *Chairman.*

Mr. WILLIS. The next witness on our agenda is Judge Prettyman. Judge, we are very happy to have you. I know you have devoted a lot of time and study to this subject and we are going to try to squeeze your legal lemon, try to get from you a practical explanation of this proposal.

STATEMENT OF HON. E. BARRETT PRETTYMAN, SENIOR CIRCUIT JUDGE, COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA, AND FORMER CHAIRMAN OF PRESIDENT KENNEDY'S TEMPORARY ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Judge PRETTYMAN. I am very happy to be here, Mr. Chairman, and members of the committee.

My name, for the record, is E. Barrett Prettyman. I am a senior judge on the U.S. Court of Appeals for the District of Columbia Circuit, and I am here because I was Chairman of the Administrative Conference of the United States, first called by President Eisenhower in 1952 or 1953, and the similar Administrative Conference called by President Kennedy on April 13, 1961, by Executive Order 10934.

I appear in support of S. 1664, on behalf of the Council of the Administrative Conference and myself, and urge that the bill be reported favorably and its passage by the House recommended.

This project has now come full circle. It began in September 1949, almost 15 years ago, when a subcommittee of the Judiciary Committee of the House—possibly this same subcommittee or its predecessor—communicated with the Chief Justice of the United States and asked him to request what was then the senior council of circuit judges, now the Judicial Conference of the United States, to endeavor to develop some timesaving procedures in certain cases, including controversies before the regulatory agencies.

The Judicial Conference appointed an advisory committee, and the latter, after almost a year's study, expressed the view that the agencies themselves must solve the problem; that a cooperative approach with mutual exchange of experience and suggestion was imperative. It recommended that the Judicial Conference suggest to the President that he call a conference of representatives of the administrative agencies for the purpose of devising means for achieving these objectives.

The Conference approved the suggestion. Chief Justice Vinson submitted it to the President; on April 29, 1953, President Eisenhower called such a Conference. It met throughout the years 1953 and 1954. It adopted 35 specific recommendations and, as its final action, recommended that a similar conference be established on a permanent basis.

Thereafter the subject was considered in great detail by many organizations, including the American Bar Association, the Federal Bar Association, the Judicial Conference for the District of Columbia Circuit, and the chairmen of the large independent agencies.

The idea was approved all along the line. Under date of August 29, 1960, President Eisenhower authorized arrangements for the initial organization of such a Conference. The national election in November of 1960 interrupted the work of the organizing committee and promptly after his inauguration, President Kennedy, on April 13,

1961, sent the Congress a special message on regulatory agencies, and by Executive order on the same day established a temporary Administrative Conference.

That Conference was composed of the Chairman and 85 members, representing Government agencies having rulemaking and adjudicatory functions, and persons outside the Government, both lawyers and students of government, with experience in administrative law.

President Kennedy directed that Conference to submit specific recommendations and also to advise him of appropriate means to be employed in the future for the purpose of improving the processes of administrative agencies.

That Conference recommended that a similar Conference be established on a continuing basis as a means by which the agencies of the Federal Government could cooperatively, continuously, and critically examine their administrative processes.

That recommendation resulted in the preparation of the bill which was introduced in the Senate, passed the Senate and is now before this committee, S. 1664. The bill was unanimously adopted by the Senate and is now before this committee.

Thus at long last, the answer to the request of this subcommittee made 15 years ago is before the committee. It comes with the endorsement of the Senate, two conferences composed of the top experts in this field in the country, the Judicial Conference of the United States, the regulatory agencies, American bar, and the Federal bar.

I have prepared a detailed history of this project, brought up to date as of today, and I would like to submit copies for the use of this committee.

I have a number of copies here.

Mr. WILLIS. They will certainly be accepted.

(The document referred to is as follows:)

THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

(As of March 5, 1964)

In July of 1949 there was testimony before a special subcommittee of the Judiciary Committee of the House of Representatives relating to delays in the trial of certain cases. In the course of these hearings the chairman announced: "* * * we have communicated with Chief Justice Vinson and we have asked him to request the Senior Council of Circuit Judges, when they meet in September, to endeavor to develop some timesaving procedures, procedures especially in the antitrust laws." Therefore, at its September meeting, 1949, the Judicial Conference of the United States adopted a resolution which read, in part:

"The Conference was of the opinion that experience has indicated the desirability of examining the present procedure governing controversies arising under the antitrust laws and the various statutes establishing regulatory agencies with a view to advancing their effective, expeditious, and economic disposition, and authorized the designation of a committee of the Conference to consider: [means by which these ends might be achieved.]"

The Chief Justice appointed a Committee of 10 judges, Circuit Judges Stone, Magruder, Augustus Hand, Lindley, and Prettyman, and District Judges Chesnut, Kloeb, Leahy, Rifkind, and Yankwich.

At its first meeting the Committee took action which is reflected in the following extract from a letter from the Committee to the Chief Justice:

"The Committee was troubled by the assignment to it of the administrative agency phase of the general problem. The members of the Committee were of the view that their own limited experience in this field would place a limited value upon their recommendations in the field.

"After careful discussion the Committee unanimously instructed me to suggest respectfully to you the appointment of a second section to this Committee, to be composed of persons familiar with the problems of the administrative agency procedure; for example, members or general counsel of commissions or experienced private practitioners before the agencies, or both."

Thereupon the Chief Justice authorized the appointment of "an Advisory Committee, composed of persons in and out of the Government familiar with the problems of administrative agency procedure." On June 20, 1950, such an Advisory Committee was appointed. It had 12 members: 3 members of administrative agencies, 3 general counsels for agencies, 2 private practitioners who had then recently left membership on administrative agencies, and 3 lawyers in the general practice with prior administrative law experience. In a footnote are the names of the members of that committee.¹

This Advisory Committee spent 9 months in a firsthand investigation of the causes of excessive delay and expense and unduly voluminous records in the procedures of Federal regulatory agencies, and possible remedies therefor. On March 30, 1951, it submitted its report, which contained a dozen recommendations. The first was for an "Administrative Agency Conference." The idea was first suggested by Clyde Aitchison, of the ICC, a member of the Committee, and at that time the dean of all commissioners in the Government. At any rate he made a speech during that time to the ICC Practitioners Association, which was later published in its Journal of November 1950 (vol. XVIII, pp. 118, 120-122). In that talk the Commissioner stressed the responsibility of the Commission and of its practicing bar in the formulation of remedies for the problems of cumbersome, costly, and overly detailed procedures. Here the germ of an idea can be readily detected. The Advisory Committee said:

"The regulatory agencies themselves must solve this problem. The solution may best be accomplished by the cooperation of all agencies involved; in fact, a cooperative approach, with mutual exchange of experience and suggestions, seems imperative for the most efficient functioning of the administrative agencies. With such an approach to this problem in mind, your Committee's primary recommendation is that the Judicial Conference suggest to the President that he call or cause to be called, a conference of representatives of the administrative agencies having adjudicatory and substantial rulemaking functions, for the purpose of devising ways and means for achieving the objectives with which this Committee is concerned."

The Judicial Conference Committee to which this report was addressed approved it, and the Judicial Conference itself approved it. At its meeting in September 1951, the Conference adopted a resolution as follows:

"Upon consideration, the Conference ordered that the Committee's suggestions and recommendations with respect to the call of a conference of representatives of the administrative agencies having adjudicatory and substantial rulemaking functions, be approved with this additional recommendation:

"That representatives from the Federal judiciary and the bar as may be desired be designated to attend said Conference and to serve in such capacity as the President may determine."

Chief Justice Vinson duly transmitted this suggestion to the President.

On April 29, 1953, President Eisenhower issued a document addressed to all executive departments and administrative agencies. He said, in part: "Accordingly, I am happy to call a conference of representatives of the departments and agencies, and of the judiciary and the bar, for the purpose of studying the problems thus described."

He requested the Attorney General to cause a list to be prepared of the departments and administrative agencies having adjudicatory and rulemaking functions. He requested each department and agency thus listed by the Attorney General to designate a representative to meet with other such representatives in a conference. With the agreement of the Chief Justice he invited three Federal judges to participate. He named 3 trial examiners and 12 practicing lawyers to participate.

The Attorney General listed 57 agencies. Thus the Conference was composed of 75 members. This Conference came to be known as the President's Conference on Administrative Procedure. It operated in the following fashion: A Committee on Organization and Procedure, consisting of six members, was appointed

¹ E. Barrett Prettyman, Chairman; Clyde B. Aitchison, John Carson, Benedict P. Cottone, Robert K. McConnaughey, E. L. Reynolds, Paul L. Styles, Preston C. King, Jr., Joseph J. O'Connell, Jr., Bradford Ross, John L. Sullivan, Roger J. Whiteford.

and acted as an executive committee, planning the organization and the rules of procedure. Nine other standing committees were appointed—on prehearing, pleadings, evidence, trial problems, hearing officers, judicial review, uniform rules, office of Federal administrative procedure, and style.²

These committees conducted studies of the subjects assigned to them by the Conference. Some of them conducted extensive hearings. They summoned to their assistance prominent experts in the field, who were denominated consultants. The Committees prepared reports, some of which were extensive and contained much basic material. These reports were circulated to the members of the Conference but were not debated or acted upon by the Conference. The Committees also submitted recommendations, which were direct and succinct and based upon or drawn from reports. These recommendations were placed on the agenda of the Conference and were debated and adopted or rejected. When adopted, they were referred to the Committee on Style for editorial revision. This procedure was, generally speaking, the procedure usually followed by legislative bodies.

The Conference held four plenary sessions, June 10, 11, 1953, November 23, 24, 1953, October 14, 15, 1954, and November 8, 9, 1954. It adopted 35 recommendations, 2 addressed to the President, 3 to the Judicial Conference, 7 to the Civil Service Commission, 1 to the General Services Administration, and 22 to the various Government agencies. It adopted a final report, which was duly transmitted to the President. As its final action the Conference adopted a resolution recommending that a similar conference be established on a permanent basis. President Eisenhower acknowledged receipt of the report on March 3, 1955, and said, in part:

"The work of the Conference has shown that an exchange of experience and views between Federal administrators and between them and members of the practicing bar and the judiciary produces useful results. I am confident that means will be devised for continuing such cooperative effort."

The resolution respecting a permanent conference was referred by the President to the Attorney General.

Thereafter several parallel series of events ensued. The Judicial Conference of the District of Columbia Circuit, the American Bar Association, the Federal Bar Association, and the chairman of the large independent agencies all studied and took action in respect to the proposal for a permanent conference of the agencies respecting their procedures and other problems.

In the fall of 1958, in preparing for the Judicial Conference of the District of Columbia Circuit to be held in the spring of 1959, the Committee on Arrangements listed as one topic for the consideration of the conference "Problems of Administrative Law."

This Circuit Judicial Conference consists of all the Federal judges on the district court and the circuit court of appeals, various Federal and municipal law officials, and about 120 members of the practicing bar who are selected by a committee of judges and lawyers. Several months before a meeting of the Conference its Committee on Arrangements selects topics for debate, consideration, and action. Study groups, usually composed of 20 or 25 members each, are assigned to study and present recommendations on these topics. The membership of the 1959 conference included a number of Government attorneys and a large number of attorneys engaged in practice before the administrative agencies.

The study group on the administrative law topic was chairmanned by William C. Koplovitz, Esq. It presented three reports. All reports recommended the establishment of a permanent Conference on Administrative Procedure but they differed on machinery.

One report recommended that the Attorney General call together a group to formulate plans for the Conference and to make appropriate recommendations to the President for its establishment. Another report recommended that the President call an interim conference pending enactment of a statute, and that the permanent Conference be established by legislation. The third report recommended that the chairmen of the seven large independent agencies meet and establish the Conference.

After extensive debate the Judicial Conference adopted the second of these proposed recommendations: that is, an interim conference to be established by the President and a permanent conference to be established by an act of

²The Chairmen of these Committees were John C. Doerfer, Allison Rupert, Emory T. Nunneley, Jr., Edmund L. Jones, Earl W. Kintner, Lambert McAllister, Thomas J. Herbert, John A. Danaher, and Conrad E. Snow.

Congress. That recommendation was transmitted to the Judicial Conference of the United States, which at its September 1959 meeting appointed a committee to consider the matter. At its meeting in March 1960, this conference; i.e., the Judicial Conference of the United States, adopted the following resolution:

"Resolved, That this Conference approves the establishment of a permanent Conference on the procedures of executive departments and administrative agencies in adjudications and rulemakings, in which Conference representatives of the departments, the agencies, and the practicing bar would participate, for the purpose of exchanging information and making recommendations to the several agencies and departments for the improvement of the administration of justice by them. The Chief Justice, as Chairman of this Conference, is authorized to communicate this action, at such times as he deems appropriate, to the President and to such other officers, including Members of the Congress, as may be concerned with this subject from time to time; and the Chief Justice is further authorized to implement this action further in such other ways as he may deem appropriate."

Chief Justice Warren thereafter transmitted the resolution to President Eisenhower, together with his own strong personal recommendation for such a conference.

In the meantime, coincident with the study undertaken by the Judicial Conference (District of Columbia) a special committee of the Federal Bar Association began a study of the matter and made a report to the National Council of that association. On May 20, 1959, the day before the meeting of the District of Columbia Judicial Conference, the National Council of the Federal Bar unanimously adopted a resolution which endorsed the concept of a permanent conference, and called upon the Attorney General to invite a committee of representatives of the agencies and the practicing bar to formulate plans to be presented to the President for such a conference. The Federal bar, it can be safely said, was opposed to legislation as an initial step.

On September 24, 1959, Chief Justice Warren addressed the annual convention of the Federal Bar Association in a speech which was one of the key events in the development of administrative law in recent years. Among other things he said:

"Today it is generally recognized that far too many administrative proceedings in Federal agencies are also subject to excessive and unnecessary delay. Perhaps even more discouraging in the agency proceedings is the fact that meaningful information on the state of the backlog, and the extent of the delay, is not even available.

"This is true because there presently exist few criteria or standards for determining how long it should normally take to get final agency action on the ordinary administrative case.

* * * * *

"If there is anything which symbolizes the disillusion of the American people—of the lay public—in our legal system, it is the factor of unconscionable delay.

* * * * *

"Turning briefly to the legal services performed in the administrative agencies, I know that many of you are aware that last year 21 Federal administrative agencies terminated in excess of 25,000 proceedings, and that the trend is continually upward. * * *

"For this reason, I am particularly glad to inform you that the Judicial Conference of the United States, at its meeting last week, approved in principle the proposal for a permanent Conference on Administrative Procedure—which the Federal Bar Association and judges have been advocating.

"Such a conference—composed basically of agency representatives, but with practicing lawyers and other participants as well, is sorely needed to conduct continuing and practical studies of ways to eliminate undue delay, expense, and volume of hearing record; to develop uniform rules of practice and procedure; and generally to promote greater efficiency and economy in the administrative process."

Also in the meantime, at the meeting of the Council of the Administrative Law Section of the American Bar Association at Miami in August 1959, a resolution was adopted endorsing the idea of a permanent Conference on Administrative Procedure, the steps to be an interim conference to be set up by the President and a permanent conference to be created by the Congress. This, we may note, was the same as the view taken by the Judicial Conference (Dis-

trict of Columbia). That resolution was adopted by the section, transmitted by special order to the house of delegates, and there adopted. Transmission to the Judicial Conference (U.S.) and to the President was authorized. At the same time the house of delegates designated the council of the administrative law section and the special committee on procedure, chaired by Smith W. Brookhart, Esq., to act jointly in the preparation of legislation on the subject. Proposed legislation was prepared for presentation to the midwinter meeting of the house of delegates in Chicago in February 1961. On account of then pending events, action on that report was postponed until the August meeting, 1961.

In February 1960 the Subcommittee on Legislative Oversight, of which Congressman Oren Harris was the chairman and Robert W. Lishman was chief counsel, submitted an interim report (H. Rept. No. 1258, 86th Cong., 2d sess.), in which attention was called to the steps being taken in the process of the formulation of a proposed permanent group to study the overall problems of the agencies. The subcommittee said:

"Current thinking is that this new organization, to be known as the Conference on Administrative Procedures, will perform, in the administrative law field, the present functions in the judicial field which are performed by the Conference on Judicial Procedures."

Still in the meantime, the Chairmen of six of the large independent agencies (Civil Aeronautics Board, Federal Trade Commission, Federal Power Commission, Federal Communications Commission, Securities and Exchange Commission, and Interstate Commerce Commission) jointly prepared a letter to the President. This was a long, detailed statement, in which the need for a permanent conference was stated and the composition of such a conference suggested. The letter further proposed that an organization committee prepare an agenda for the Conference and suggested further that consideration of legislation not be undertaken until after organization of the Conference and that recommendations respecting legislation be adopted by the Conference itself. In this letter it was proposed that eight of the Cabinet departments, the Civil Service Commission, the Atomic Energy Commission, the Federal Aviation Agency, and the seven large independent agencies send representatives to the Conference, and that certain bar associations nominate members. "Such associations," said the letter, "might well include" the American Bar, the Federal Bar, the ICC Practitioners, the Motor Carrier Lawyers Association, the Federal Power Bar, the Federal Communications Bar, the Federal Trial Examiners' Conference, "and similar organizations." That letter was eventually completed and dated August 25, 1960.

Under date of August 29, 1960, President Eisenhower concurred in the proposal and authorized arrangements for the initial organization of such a conference. A committee, which came to be known as an Organization Committee, was thereupon appointed³ and after several weeks of work completed a proposed set of bylaws.

The Conference envisioned by that set of bylaws was an assemblylike body of 65 delegates, 40 of whom would be from the Government and 25 from outside the Government. One delegate would be designated by the Secretary of each of nine Cabinet departments, two from each of the seven big agencies, two trial examiners, and six to be appointed at large by the chairman, with the approval of the Executive Committee. The plan envisioned that five delegates be named by the president of the American Bar Association, two by the president of the Federal Bar Association, eight from the practicing bar, five from university faculties, and five experts in nonlegal fields, all to be named by the chairman, with the approval of the Executive Committee. The plan provided for standing committees, for a permanent secretariat, and for liaison with the Congress through the naming of six Representatives, three from each House, by the Vice President and Speaker, respectively.

The proposed bylaws described in some detail the subjects which would be considered by the Conference. About this time the national election occurred, and action looking toward a call of the Conference was postponed.

³ The names of the members of this committee were Donald C. Beelar, Marver H. Bernstein, Kent H. Brown, John L. Fitzgerald, Robert W. Ginnane, Earl W. Kintner, Robert Kramer, John C. Mason, Thomas G. Meeker, Carl R. Miller, E. Blythe Stason, Theodore F. Stevens, Jerrold G. Van Cise, Franklin M. Stone; E. Barrett Prettyman, chairman; and William C. Koplovitz, secretary.

Promptly after the election, President-elect Kennedy named Dean James M. Landis to prepare for him a report on the administrative agencies and their problems. Dean Landis submitted his report on December 26, 1960. In it he referred to the President's request of August 29, to the Organization Committee, and to the preliminary draft of bylaws. He recommended that this work be encouraged and continued. He said, in part:

"* * * Much can come from this effort, including not merely revisions in our administrative procedures but also the making of our regulatory agencies into a system just as the Judicial Conference of the United States has made a system of what were once isolated and individual Federal courts. * * *

"The concept of an Administrative Conference of the United States promises more to the improvement of administrative procedures and practices and to the systematization of the Federal regulatory agencies than anything presently on the horizon. It could achieve all that the concept of the Office of Administrative Procedure envisaged by the Hoover Commission and endorsed by the American Bar Association hoped to accomplish, and can do so at a lesser cost and without the danger of treading on the toes of any of the agencies."

On April 13, 1961, President Kennedy sent to the Congress a special message on regulatory agencies. In the course of that message he discussed the establishment of an Administrative Conference of the United States. He said, in part: "The process of modernizing and reforming administrative procedures is not an easy one. It requires both research and understanding. Moreover, it must be a continuing process, critical of its own achievements and striving always for improvement." He announced that he had issued an Executive order calling at the earliest practicable date the Conference, to be organized by a council of lawyers and other experts from the agencies, the bar, and university faculties. He said that the council would consider questions concerning the effective dispatch of agency business, "along with the desirability of making this Conference, if it proves itself, a continuing body for the resolution of these varied and changing procedural problems." He further said:

"The results of such an Administrative Conference will not be immediate but properly pursued they can be enduring. As the Judicial Conference did for the courts, it can bring a sense of unity of our administrative agencies and a desirable degree of uniformity in their procedures. The interchange of ideas and techniques that can ensue from working together on problems that upon analysis may prove to be common ones, the exchanges of experience, and the recognition of advances achieved as well as solutions found impractical, can give new life and new efficiency to the work of our administrative agencies."

In his Executive Order No. 10934 President Kennedy established the Administrative Conference of the United States, to consist of a Council of 11 members named by him and a general membership from the executive departments, the administrative agencies, the practicing bar, and other persons specially informed. "The purpose of the Conference," says the Executive order, "shall be to assist the President, the Congress, and the administrative agencies and executive departments in improving existing administrative procedures." The order provided that the composition of the membership should be determined by the Council; that the total membership be not less than 50 persons, a majority of whom should be from the executive departments and administrative agencies; that the government members be designated by the heads of their respective departments and agencies; and that the other general members be named by the Chairman, with the approval of the Council. The order provided that the Director of the Office of the Administrative Procedure, which is in the Department of Justice, should act as the executive secretary of the Conference. It authorized the making of arrangements with the President of the Senate and the Speaker of the House for participation by interested committees of the Congress.

The next day after the foregoing events the Subcommittee on Administrative Practice and Procedure of the Senate Judiciary Committee returned a report (S. Rep. No. 168, 87th Cong., 1st sess.) in the course of which it said, in part:

"VI. The subcommittee recommends that every assistance should be given in making permanent an Administrative Procedure Conference, and that Congress should provide the Office of Administration and Reorganization with funds to provide a permanent secretariat for that conference.

* * * * *

"That such an assembly of the persons most directly concerned with the functioning of administrative agencies offers a continuing possibility of improvement in procedures through interchange of ideas is a matter of universal agreement * * *. The subcommittee recommends that every congressional encouragement be given to the establishment and continuation of the conference. Since, as we have pointed out elsewhere, we believe that the guidance of the President is necessary for the improvement of the administrative process, we recommend that the permanent staff should be a part of the Office of Administration and Reorganization, and therefore a part of the President's own staff."

On April 29, 1961, the President announced the appointment of the Council of the Administrative Conference. In so doing he called attention to the fact that the Council membership, apart from the Chairman, was equally divided between those from the Government and those from outside the Government. The members, besides the Chairman, were Manuel F. Cohen, member of the Securities and Exchange Commission; Walter Gellhorn, professor of law, Columbia University, New York City; Joseph P. Healy, vice president-general counsel, Boston Edison Co., Boston, Mass.; Everett Hutchinson, chairman, Interstate Commerce Commission; James M. Landis, special assistant to the President; John D. Lane, of the firm of Hedrick & Lane, Washington, D.C.; Earl Latham, Eastman professor of political science, Amherst College, Amherst, Mass.; Carl McGowan, of the law firm of Ross, McGowan, & O'Keefe, Chicago, Ill.; Nathaniel L. Nathanson, professor of law, Northwestern University, Evanston, Ill.; and Max D. Paglin, General Counsel, Federal Communications Commission. Webster Maxson, Director of the Office of Administrative Procedure, was executive secretary.

The Council thus constituted included, besides the Chairman, three practicing lawyers, three professors (one of whom is an outstanding authority in political science and two are outstanding professors of administrative law), and three are from Government agencies. The 10th member of the Council, Dean James M. Landis was highly experienced in the chairmanship of regulatory agencies, highly experienced in the teaching of law, and highly experienced in the practice of the law.

The Council was immediately called into session and met in three sessions, Monday and Tuesday, May 8 and 9, Monday and Tuesday, May 22 and 23, and on Monday, June 26, 1961. On May 23 it finalized plans for the institution and operation of the Conference. It named the agencies to be invited, approved a list of non-Government members to be named, adopted bylaws to be proposed to the Conference, adopted in general terms a program of work for the Conference, and adopted a budget to be submitted to the Congress. It called the first meeting of the Conference for Tuesday, June 27, in Washington. That first plenary session was held as scheduled.

The Conference thus set up was composed of a Chairman and 85 members. Of these, 10 were the Council named by the President; 44 members were named by the heads of executive departments and agencies, 22 were named from outside the Government, and 2 trial examiners were designated. The members not named by the departments and agencies were named by the Chairman of the Conference with the approval of the Council. The composition of the Conference was 60 percent from the Government agencies and 40 percent from the outside ($5+44+2=51$; $5+29=34$). Members named by the heads of Government agencies were as follows: By the Secretaries of the Cabinet departments each 1 member, and by some whose departments include several agencies, 2 members; by the heads of each of the so-called big 7 independent agencies, 2 members; by the heads of 14 other agencies having rulemaking or adjudicatory functions, 1 member each. Of the members from outside the Government service, 21 were practicing lawyers, 3 were from law school faculties, 2 were from faculties of schools of government, and 1 was an accountant.

In the selection of the members from the practicing bar, a major effort was made to produce a cross section of all shades of interest in administrative law procedure. A list was made of the names of over a hundred thoroughly qualified people from which to choose. Specialists in each of the major areas of Federal regulation were named. Some others with broad general experience in several areas were included. Some lawyers not specialists were named. Geography, both of the lawyers and of their major clients, was a factor, although of course several from Washington, D.C., were necessarily on the list. Not more than one member of any one law firm, or from any one university, was named. Different interests in the several areas of interest are represented, as, for ex-

ample, shippers as well as the railroads and motor carriers in the field of interstate commerce. A mixture of political affiliations was sought. Every invitee accepted. The roster of the Conference is attached.

No member of the Conference, either from the Government or from outside, appeared in a representative capacity. Each appeared as an individual, and while of course each gained assistance by inquiry and consultation, the views expressed and the votes cast by each were understood to be his own.

The Conference operated on an assembly or legislative basis. Subjects for study and recommendation were immediately assigned to committees. Nine standing committees were established. Their principal areas of interest were respectively: (1) personnel, (2) rulemaking proceedings, (3) licensing and certifying proceedings, (4) compliance and enforcement proceedings, (5) the adjudication of claims, (6) statistics and reports, (7) internal operation and procedure, (8) education and information, meaning the preparation of manuals on procedure and the holding of seminars in the field, and (9) judicial action of various sorts. Specific topics were assigned for study and recommendation, ranging from recruitment programs for lawyers in government, through improvements in proceedings for all sorts of cases, formulation of criteria for measuring delay and backlogs, better internal operations, grassroot informational meeting, manuals in craftsmanship, the massive complex which is delay and expense, all the way to better means for judicial review.

The chairman of these committees are Ashley Sellers, Esq.; Commissioner Gilliland, of the CAB; Commissioner Hyde, of the Federal Communications Commission; Messrs. Robert W. Ginnane, James McL. Henderson, and Cyrus R. Vance, who were, respectively, General Counsel of the Interstate Commerce Commission, the Federal Trade Commission, and the Department of Defense; Messrs. Charles W. Bucy and David Ferber, who were associate counsel of the Department of Agriculture and the SEC; and Prof. Emmette S. Redford, of the University of Texas.

Liaison with the Congress by means of Members of each House, designated by the Vice President and the Speaker, respectively, which designees are invited to attend the sessions of the Conference and to enjoy the privilege of the floor. These designees are Senator Hart, Muskie, and Dirksen, and Congressmen Oren Harris, Walter Rogers, and John B. Bennett.

The committees were fortunate in obtaining the services of educators in leading law schools in the country, who acted as full-time staff directors and as consultants as the need appeared. The names of these scholars were: Auerbach of Wisconsin and Minnesota, Cramton of Michigan, Jones of Columbia, Kramer of George Washington, Lester of Cincinnati, McKay of New York University, and Metzger of Georgetown. And the committees were authorized to secure the services of research directors, upon a retainer basis of employment, but members of the Council and of the Conference and most of the consultants served without compensation. Administrative and secretarial services were supplied the Conference and the committees by the Office of Administrative Procedure of the Department of Justice.

The Conference, as a whole, operated in the form of a legislative assembly. The course of operation was: (1) A subject was suggested for study. Such suggestion might come from anywhere or anybody. (2) The Council adopted the suggestion and proposed its assignment to a committee. (3) The assembly approved the Council assignment. (4) The committee considered the subject and directed research into it. (5) A staff director made or directed the research and formulated the data thus accumulated into a staff report. (6) The committee considered the staff report and prepared a recommendation of action on the subject. It formulated a report—usually, of course, based upon the staff report—in support of its recommendation. These—the committee report and its recommendation—were two separate documents, one somewhat extensive and the other succinct. (7) The Council considered the recommendation and passed it along to the Assembly. Both the report and the recommendation were circulated to the entire membership. (8) The Assembly debated the recommendation in a public plenary session and voted on it. (9) If adopted by the Assembly, the recommendation was transmitted to the President. A total of 30 recommendations were adopted, covering a wide variety of matters, more importantly the following:

“Jurisdiction and procedures for review orders of the Interstate Commerce Commission: production of records and briefs by means more economical than printing, and designation of record after the filing of briefs; unification of the

Armed Services Board of Contract Appeals and elimination of subsidiary boards; reexamination by agencies of their procedural rules, and creation of machinery within the agencies for continuous observation of procedures; delegation of final decisional authority; subpoena practices; licensing of truck operations by the Interstate Commerce Commission; right to counsel of persons compelled to appear; improper ex parte representations; statistics on administrative proceedings (1962); judicial enforcement of orders of the National Labor Relations Board; ratemaking procedures; Civil Aeronautics Board procedures for the consideration of domestic route applications; Federal Communications Commission procedures for the consideration of mutually exclusive applications for broadcast facilities in the same community; Federal Communications Commission procedures for broadcast licensing; right to counsel of persons who appear voluntarily; continuing statistical study; advanced training of agency professional personnel; examiners; legal career service; debarment of contractors; discovery in administrative proceedings."

The Conference met in six plenary sessions. The first was held on June 27, 1961. The five later sessions convened on December 5 and 6, 1961; April 3, 1962; June 29, 1962; October 16, 17, and 18, 1962; and December 4 and 5, 1962. The first session was attended by 76 members, the second by 74 members, the third by 77 members, the fourth by 69 members, the fifth by 81 members, and the final session by 72 members.

The nine standing committees met for the first time immediately following the first plenary session. During the 18 months which followed there were a total of 93 such committee meetings.

Initial arrangements for the operation of the Conference included the establishment of an interagency group fund, pursuant to authority contained in the Executive order and 31 U.S.C. 691. In this way \$60,000 was made available for the first few months of Conference operation. In September 1961, Congress added an appropriation of \$150,000 for Conference operations during the remainder of the fiscal year 1962, and in October 1962 an additional \$100,000 was appropriated for the 6 months of fiscal year 1963 in which the Conference would be in operation.

At the end of fiscal year 1961, \$28,018.09 of the funds contributed to the interagency group fund remained unobligated. At the end of fiscal 1962, \$57,543 remained unused from the total funds available. These unobligated balances were released to the Treasury of the United States.

The Conference rendered a final report of its activities under date of December 15, 1962. The report was made public.

At the same time, under date of December 17, 1962, the Conference, pursuant to section 2 of Executive Order 10934, reported its suggestions of appropriate means to be employed in the future for the purpose of improving the processes of administrative agencies. It said, in part:

"We recommend the establishment of means by which agencies in the Federal Government may cooperatively, continuously, and critically examine their administrative processes and related organizational problems. Believing that the main sources of information as well as the resolve to couple fairness with efficiency lie within the agencies themselves, we urge that the proposed organization be composed largely of governmental personnel, but with a sufficient infusion of outside experts to assure objectivity and variety of views."

It recommended the creation, on a permanent footing, of an Administrative Conference of the United States, to be composed of a Council and an Assembly. The Council, it said, should consist of a Chairman and 10 other members, the Chairman to be appointed by the President, by and with the advice and consent of the Senate, for a term of 5 years, and other Councilors to be appointed by the President to serve 3-year terms.

The Assembly, the Conference said, should be composed of the members of the Council and, in addition, not more than 80 members, to be named preponderantly from among Government personnel by the heads of agencies designated by the Council, and, in lesser numbers, chosen by the Council from the bar, the universities, and other sources. The Administrative Conference, the recommendation said, should have power to inaugurate and conduct studies of any phase of any agency's procedures, giving "procedures" the broadest meaning, and should have power to submit recommendations to the President, the Cabinet departments, the administrative agencies, the Congress and its committees, and the Judicial Conference of the United States.

The report related the recommendation in considerable detail, and recited at length the reasons which impelled the recommendation. The report was made public.

Thereafter the Bureau of the Budget translated the recommendation of the Conference for a continuing Conference into the form of a proposed bill. The draft was introduced in the Senate as S. 1664, 88th Congress, 1st session, by Senator Long of Missouri, chairman of the Senate Subcommittee on Administrative Practice and Procedure. The bill was referred to the Committee on the Judiciary. That committee reported the bill with amendments and recommended that it pass (Rept. No. 621, Oct. 29, 1963, 88th Cong., 1st sess.). The report was unanimous. The bill passed the Senate without objection on October 30, 1963 (109 Congressional Record 19566). In the House of Representatives, on October 31, 1963, the bill was referred to the Committee on the Judiciary. There it was referred to Subcommittee No. 3.

APPENDIX

IDENTIFICATION OF COUNCIL MEMBERS

- Judge E. Barrett Prettyman (Chairman), senior judge of the U.S. Court of Appeals for the District of Columbia Circuit.
- Max D. Paglin (Vice Chairman), General Counsel, Federal Communications Commission, formerly Assistant General Counsel and staff member.
- Manuel F. Cohen, member of the Securities and Exchange Commission, formerly Director, Division of Corporation Finance, Securities and Exchange Commission.
- Walter Gellhorn, professor of law, Columbia University, 1933 to date; Director, Attorney General's Committee on Administrative Procedure, 1939-41; Office of the Solicitor General, U.S. Department of Justice, 1932-33; author of various books on administrative law.
- Joseph P. Healey, vice president-general counsel of Boston-Edison Co.; former commissioner of Corporations and Taxation for the Commonwealth of Massachusetts; former law partner in law firm of Hemenway & Barnes, Boston, Mass.; professor of corporate law at Boston College Law School since 1947.
- Everett Hutchinson, member and former Chairman of the Interstate Commerce Commission.
- James M. Landis, partner in the firm of Landis, Brenner, Feldman & Reilly; formerly Special Assistant to the President; Chairman of the Civil Aeronautics Board; Chairman of the Securities and Exchange Commission; dean of the Harvard Law School.
- John D. Lane, member of the firm of Hedrick & Lane, Washington, D.C.; formerly administrative assistant to Senator Brien McMahon of Connecticut.
- Earl Latham, Eastman professor of political science, Amherst College, Amherst, Mass.
- Carl McGowan, member of the firm Ross, McGowan & O'Keefe, Chicago, Ill.; general counsel, Chicago & Northwestern Railroad; formerly professor of law, Northwestern University Law School; formerly counsel to the Governor of Illinois.
- Nathaniel L. Nathanson, professor of law, Northwestern University; consultant to the Justice Department with respect to administrative procedures, 1961; Office of Price Administration, Associate General Counsel, 1942-45; Securities and Exchange Commission, 1935-36; law clerk to Justice Louis D. Brandeis, 1934-35; author of casebook on administrative law.

GENERAL MEMBERSHIP OF THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

- Robert E. Adams¹ of the Department of Commerce.
- Karl E. Bakke of the U.S. Tariff Commission.
- Donald C. Beelar of the firm Kirkland, Ellis, Hodson, Chaffetz & Masters, Washington, D.C.
- James H. Benney of the firm Orrick, Dahlquist, Harrington & Sutcliffe, San Francisco, Calif.
- Marver H. Bernstein of Princeton University.

¹ Succeeded Paul A. Johnston of the Department of Commerce.

Carman G. Blough of Harrisonburg, Va.
 J. D. Bond of the Atomic Energy Commission.
 Reva Beck Bosone of the Post Office Department.
 Cyril F. Brickfield² of the Veterans' Administration.
 Kent H. Brown of the State of New York Public Service Commission.
 Charles W. Bucy of the Department of Agriculture.
 Clark Byse of the Law School of Harvard University.
 John T. Chadwell of the firm Snyder, Chadwell, Keck, Kayser & Ruggles, Chicago, Ill.
 G. Howland Chase of the Board of Governors of the Federal Reserve System.
 Cyrus J. Colter of the Illinois Commerce Commission.
 John F. Cushman of the Federal Communications Commission.
 Richard M. Davis of the firm Lewis, Grant & Davis, Denver, Colo.
 George S. Dixon of the firm Matheson, Dixon & Bieneman, Detroit, Mich.
 Charles Donahue of the Department of Labor.
 Thomas J. Donegan of the Subversive Activities Control Board.
 Bernard Dunau of the firm Jaffee & Dunau, Washington, D.C.
 David C. Eberhart of the General Services Administration.
 Irvin Fane of the firm Spencer, Fane, Britt & Browne, Kansas City, Mo.
 Joseph A. Fanelli of the firm Fanelli & Spingarn, Washington, D.C.
 Roland J. Faricy³ of the firm Faricy, Moore, Costella & Hart, St. Paul, Minn.
 William Feldesman of the National Labor Relations Board.
 David Ferber of the Securities and Exchange Commission.
 Edward W. Fisher of the Department of the Interior.
 Thomas J. Flavin⁴ of the Department of Agriculture.
 Abe Fortas of the firm Arnold, Fortas & Porter, Washington, D.C.
 Ralph Fuchs of the University of Indiana Law School.
 Myles F. Gibbons of the Railroad Retirement Board.
 Robert E. Giles of the Department of Commerce.
 Whitney Gilliland of the Civil Aeronautics Board.
 Robert W. Ginnane of the Interstate Commerce Commission.
 Nathaniel H. Goodrich⁵ of the Federal Aviation Agency.
 Frank C. Hale⁶ of the Federal Trade Commission.
 Lawrence E. Hartwig of the Renegotiation Board.
 James McI. Henderson of the Federal Trade Commission.
 Harold W. Horowitz of the Department of Health, Education, and Welfare.
 Thomas T. F. Huang⁷ of the Department of State.
 Leo A. Huard of the University of Santa Clara College of Law.
 Rosel H. Hyde of the Federal Communications Commission.
 John A. Johnson of the National Aeronautics and Space Administration.
 T. C. Kammholz of the firm Vedder, Price, Kaufman & Kammholz, Chicago, Ill.
 R. Keith Kane of the firm Cadwalader, Wickersham & Taft, New York, N.Y.
 Sidney G. Kingsley⁸ of the Atomic Energy Commission.
 Earl Kintner of the firm Arent, Fox, Kintner, Plotkin & Kahn, Washington, D.C.
 John W. Kopecky of the Housing and Home Finance Agency.
 William C. Koplovitz of the firm Dempsey & Koplovitz, Washington, D.C.
 Sol Lindenbaum of the Department of Justice.
 Karl D. Loos of the firm Pope, Ballard & Loos, Washington, D.C.
 Dominick L. Manoli of the National Labor Relations Board.
 John C. Mason of the Federal Power Commission.
 Joseph E. McElvain of the Department of Health, Education, and Welfare.
 Thomas G. Meeker of the firm Schnader, Harrison, Segal & Lewis, Philadelphia, Pa.
 Lawrence V. Meloy of the Civil Service Commission.
 James L. Pimper of the Federal Maritime Commission.
 John B. Prizer of the Pennsylvania Railroad Co., Philadelphia, Pa.
 Edwin F. Rains⁹ of the Department of the Treasury.
 Sidney Rawitz of the Department of Justice.
 Emmette S. Redford of the University of Texas.
 Hubert A. Schneider of Pan American World Airways, New York, N.Y.

² Succeeded William J. Driver of the Veterans' Administration.

³ Deceased.

⁵ Succeeded Daggett H. Howard of the Federal Aviation Agency.

⁶ Succeeded Philip R. Layton of the Federal Trade Commission.

⁷ Succeeded William L. Griffin of the Department of State.

⁸ Succeeded John S. Graham of the Atomic Energy Commission.

⁹ Succeeded Robert H. Knight of the Department of the Treasury.

David Searls of the firm Vinson, Elkins, Weems & Scarls, Houston, Tex.
 Harold Seidman of the Bureau of the Budget.
 Ashley Sellers of the firm Cummings & Sellers, Washington, D.C.
 Edward F. Sloane of the Federal Home Loan Bank Board.
 Fred B. Smith¹⁰ of the Department of the Treasury.
 Bertram E. Stillwell of the Interstate Commerce Commission.
 Fredric T. Suss of the Small Business Administration.
 Joseph C. Swidler¹¹ of the Federal Power Commission.
 Earl J. Thomas of the Department of the Interior.
 Cyrus R. Vance, Secretary of the Army.
 John H. Wanner of the Civil Aeronautics Board.
 Howard C. Westwood of the firm Covington & Burling, Washington, D.C.
 Edmund H. Worthy of the Securities and Exchange Commission.
 Joseph Zwerdling of the Federal Power Commission.

CONGRESSIONAL REPRESENTATIVES

Everett McKinley Dirksen, Senator from Illinois.
 Philip A. Hart, Senator from Michigan.
 Edmund S. Muskie, Senator from Maine.
 John B. Bennett, Representative from Michigan.
 Orin Harris, Representative from Arkansas.
 Walter Rogers, Representative from Texas.

ALTERNATE CONGRESSIONAL REPRESENTATIVES

Thomas B. Collins of the Senate Committee on the Judiciary.
 Franklin B. Dryden of the Senate Committee on Appropriations.
 Cornelius Kennedy of the Senate Subcommittee on Administrative Practice and Procedure.
 Kurt Borchardt of the House Committee on Interstate and Foreign Commerce.
 Charles P. Howze of the House Special Subcommittee on Regulatory Agencies.
 Andrew Stevenson of the House Committee on Interstate and Foreign Commerce.

CONSULTANTS

Robert M. Benjamin of the firm Parker, Duryee, Benjamin, Zunino & Malone, New York, N.Y.
 Kenneth Culp Davis of the University of Chicago Law School.
 J. Forrester Davison of the George Washington University School of Law.
 Roger S. Foster of Westinghouse Air Brake Co., Pittsburgh, Pa.
 Louis L. Jaffe of the Law School of Harvard University.
 John d. Millett, president of Miami University, Oxford, Ohio.
 J. Lee Rankin of New York, N.Y.
 Robert L. Stern of the firm Mayer, Friedlich, Spiess, Tierney, Brown & Platt, Chicago, Ill.

Judge PRETTYMAN. The object of the bill is to establish a means by which the delays, the expense, the voluminous records, and the technicalities which plague proceedings before administrative agencies can be eliminated or at least reduced.

I need not comment upon the importance of this subject, or upon its complexities and I shall not enter upon a detailed description of the provisions of the bill.

I would like to make three points:

One, delay in the regulatory process is a composite of many tiny details. It is not one single, all-inclusive malfunction. It cannot be carried by any sweeping declaration, no matter how righteous or how fine sounding it may be.

The administrative process consists of many parts, which are supposed to function in smooth correlation. Delay arises when one or

¹⁰ Succeeded John K. Carlock of the Department of the Treasury.

¹¹ Succeeded Jerome K. Kuykendall of the Federal Power Commission.

more of these parts malfunctions. Thus delay may arise from inept pleadings, failures in crystallizations, too many or not the proper parties, lack of advance organization, cumbersome presentation of direct evidence, unnecessary cross-examination, the amount and complexity of bulk material, repeated continuances, the handling of interlocutory rulings, the manner of preparing findings, the competence of the hearing examiners, and a myriad or more of seeming minutia, apart from the main issues of the cases.

Thus, the task of eliminating delay is not in the adoption of sweeping resolutions; it takes careful, tedious study and adjustments of many phases of the process. It takes patience, and expertise. It is not dramatic or exciting.

I like to think of any analogy to an automobile. We say an automobile breaks down, but as a matter of fact, a whole automobile never breaks down. The breakdown occurs in one or more of its dozens of components, some large and some small. The trouble may be any one of many kinds of troubles. Repairs require an expert, first to diagnose and then to correct.

My second point is that administrative proceedings are not all of one type but are of many different kinds. The problems of delay, expense, and volume vary greatly.

The proceedings range from applications which involve scores of parties, sometimes dozens of cities and towns, all the way down to the simple proceeding involving a single party and a simple question. Thus a railroad rate proceeding or an area airline route proceeding is totally different from a claim for veterans' insurance or the discharge of a single Government employee.

A study made during the recent conference revealed that there are 108 agencies which conduct hearings on open records for the purpose of determining rights and privileges of private people.

The study indicated that these agencies conduct 268 different kinds of proceedings, and in the year 1962, they completed 67,500 cases.

My third point is that the need is for a continuous study of agency procedures. A single study with recommendations serves very little practical purpose.

In the first place, general declarations of policy do not fit many small individual problems that arise; in the second place, any single declaration quickly becomes out of date in the rapidly changing atmosphere of the agency processes; in the third place, many suggested remedies ought to be tried out experimentally, and, therefore, the formulation of suggestion ought to be very flexible.

The sum total of these three points is that a conference such as the one provided in S. 1664, is really the only practical way of getting results in the reduction of delay, expense, and volume of records in these cases.

As you can well imagine, the question has been explored during the past 15 years from many viewpoints by many experts and in great depths.

You now have before you the product of all of this consideration.

I have canvassed the members of the Council of the last conference and have heard from all but one; they unanimously advocate the passage of this bill as it is.

Four members of that Council are present in the hearing room this morning. The Honorable Everett Hutchinson, who was formerly

Chairman, is now a member of the Interstate Commerce Commission; the Honorable Manual F. Cohen, who is a member of the Securities and Exchange Commission; the Honorable Max D. Paglin, who is General Counsel of the Federal Communications Commission; and John D. Lane, Esq., who is a private practitioner in Washington. The Executive Director of the Conference, Mr. Maxson, is also here.

Of course, people with different viewpoints and different background can never agree on the precise wording of a bill such as this. Quite frankly, the bill, S. 1664, in some of its details, is not as we would have drawn it.

But we are unanimously of the view that it is a good bill, that it is a major step toward good government, that it will accomplish good results of a major sort. And we very respectfully but emphatically urge that the committee report the bill favorably and recommend its passage.

I would be glad to try to answer any questions that the committee may have.

Mr. WILLIS. We certainly are grateful to you for the history of the final product that is now before us.

I have been given to understand—and if it is not so, I will stand corrected—that there is considerable agreement as to the need for the study, but that certain critical issues exist with respect to the composition of the agency or conference, with respect to participation by Government and non-Government members, the capacity in which conference members shall participate, whether as individuals or as representatives of their respective agencies, and the scope of the studies to be undertaken.

Now, that is natural, that there should be those differences. And if you are not familiar with details, we will get it from someone else, but what is the difference in these respects between the Senate bill and the bill that Chairman Harris presented H.R. 7200? As I understand it, the American Bar Association wants a broader bill than the Budget Bureau.

Now, which is broader in these respects, H.R. 7200 or the Senate bill, do you know?

Judge PRETTYMAN. Well, as I understand it, Mr. Chairman, I think I am correct, S. 1664 is really H.R. 7200 with 17 amendments.

Now, some of those amendments are very small; some of them involve issues. Now, you have stated some of the issues; if I could take them one at a time—I am not sure I recall them in order, but I will take them one at a time.

Mr. WILLIS. I made notes here, composition of the agency or conference to be established with respect to participation by Government and non-Government members; that is, the balance of the membership.

Judge PRETTYMAN. All right. Now on that question, we had in our bill originally drafted by the conference, and it is in the bill that the Budget Bureau sent to the Senate—in other words—it is in H.R. 7200 I take it—some language (the word “preponderantly” was in there at one time) that the conference should be predominantly of Government members.

Mr. LINDSAY. “Preponderantly.”

Judge PRETTYMAN. “Preponderantly” of Government members.

At one time we considered, we thought that maybe the bill ought to prescribe a percentage, say 60-40. Now, this bill, S. 1664, before you, now has no such language in it.

Mr. WILLIS. Meaning what, the net result? Who is going to decide it?

Judge PRETTYMAN. That is what makes me satisfied with the bill. I am emphatically, immovably, of the opinion that this conference must be a Government conference. It must be an agency conference. That is what it is supposed to be. It is not supposed to be a body set off somewhere by somebody else; it is supposed to be—this bill is supposed to set up a machinery by which the agencies can examine their own procedures. That is the kind of an animal it is. And I think it is the only kind of an animal that will achieve results.

If some other organization some place, the American bar or some commission or some public outfit, wants to study this subject, it is all right and they can make their own recommendations; but this animal is supposed to be a means by which the agencies, all of them, can get together and study their own problems. Therefore this must be—

Mr. WILLIS. How long have you been connected with this thing?

Judge PRETTYMAN. How long have I been?

Mr. WILLIS. Yes.

Judge PRETTYMAN. I was the chairman of the first committee appointed by the Judicial Conference in 1949. So that—I am not sure of my arithmetic but I think that is 15 years I have been—now, to answer your question, Mr. Chairman, this bill provides for the President to designate the agencies that will have representatives.

The President will appoint the Council, 10 or 11, whatever it is. The Council will pick the outside members.

All right, now, I say that if the President of the United States and Council do not provide enough Government representation on the Conference to achieve the best results, then I miss my guess a long way. I think that is a perfectly proper way to get at it, that the President and the Council appointed by him will have enough appreciation of what the problem is and the necessities, for Government representation to put it in the Conference, to so provide. So I am perfectly satisfied, despite my positive view this must be an agency conference, I am satisfied with the provisions of this bill because I think that is what it will be.

Mr. WILLIS. Which bill?

Mr. LINDSAY. Senate?

Judge PRETTYMAN. S. 1664.

Mr. LINDSAY. Senate bill?

Mr. WILLIS. So you are saying very frankly the elimination of that word "predominantly," or whatever it was—

Mr. LINDSAY. Yes, "preponderantly."

Mr. WILLIS. "Preponderantly"—will not remove the probability that it will be a Government agency?

Judge PRETTYMAN. Of course not. That is exactly my view. I think when the President of the United States and the small group appointed by him get around to considering this problem, they will know what is the fact.

Mr. WILLIS. Now, who would be the outsiders?

Judge PRETTYMAN. Who would be the outsiders?

Mr. WILLIS. Yes.

Give us an illustration.

Judge PRETTYMAN. In the first place, it would be lawyers practicing administrative law, outstanding members of the bar in the administrative field; in the next place, if they follow what was done in the last Conference, there would also be some general practitioners from the bar who have no administrative specialty, outstanding members of the bar.

At this last Conference, there was Mr. Faricy, from St. Paul, a member of the bar from Denver, one of the outstanding lawyers from New York, and so forth; three, four or five of them who had no administrative experience but were general practitioners who knew what was right and what was wrong.

Then we go to the academic field, and the outstanding people in the administrative law field in the United States were members of the other Conference: Walter Gelhorn, from Columbia, Clark Byse, from Harvard, Nat Nathanson, from Northwestern, and so on. Great names in the academic field, administrative law field, they were members.

Then there were several outstanding authorities in the field of government, the science of government. Professor Bernstein, of Princeton, Professor Redford, the head of that department at University of Texas; Professor Latham, who is the Eastman professor of economics at Amherst, such people as that.

The outside representation was a composite of practicing specialists, practicing lawyers not specialists, academic professors of administrative law and students of the science of government.

Mr. WILLIS. You feel these experts, particularly the members of the bar, would draw their clientele sufficiently from business and labor for them to have the views of these groups reflected in Conference proceedings?

Judge PRETTYMAN. Yes. It did in this Conference, from every point of view, the lawyers that represented clients in those respective fields.

Mr. WILLIS. Now, could we move to the second point of apparent difference.

Judge PRETTYMAN. Yes.

Mr. WILLIS. That was the capacity in which the conferees should participate. In other words, should the head of the Department of Agriculture or the head of FCC speak as an individual or as head of an agency? Apparently that is what they are talking about.

Judge PRETTYMAN. That is right. Here again I have a very violent view, Mr. Chairman. This Conference has to be made up of individuals, these people have to speak as individuals and not representatives of their agencies, for this reason: The question that come before such a Conference as this——

Mr. WILLIS. By the way, is that the concept of the bill?

Judge PRETTYMAN. The concept of the bill is that they should speak as individuals.

Mr. WILLIS. Under the Senate amendments?

Judge PRETTYMAN. Yes.

Mr. LIBONATI. Continuity of the activity.

Mr. Justice, in connection with the point the chairman has brought out, has any consideration been given to the overlapping of agencies on jurisdictional questions creating a difference between the concept of their obligations and their purposes? Has that ever been considered in these discussions over these years?

Judge PRETTYMAN. As I understand your point——

Mr. LIBONATI. Toward the elimination, of course, of these overlapping situations, and maybe even the identity of the agency or bureau.

Judge PRETTYMAN. As I understand your question, I do not believe I am able to answer it.

Mr. WILLIS. That might be substantive rather than procedural.

Judge PRETTYMAN. This Conference would stay away from any substantive matter. It would not deal with any specific case. And it would not have any power to change law. They might make recommendations to the Congress.

Now, on the thing you are asking me about——

Mr. LIBONATI. That is what I mean; I mean, after all, everything comes to the Congress that is recommended except those matters that pertain to the jurisdiction given by the Congress to this bureau or agency to function in its obligations in government, or responsibilities in government.

Judge PRETTYMAN. You see, the great bulk of the material this Conference will work on are matters of pure procedure: Who ought to be permitted to intervene; who ought to have authority on interlocutory awards, and so forth, and so forth; how it should be required to handle bulk material and all these kinds of things.

Now, as I understand your question, it would come to be a pretty substantive thing. If it came before the Conference, the way it would come would be a proposal, recommendation be made to the Congress, the Congress do something about it.

Mr. LIBONATI. Like we do with the Judicial Conference.

Judge PRETTYMAN. Yes. In other words, this Conference could and would undoubtedly upon occasion say, "Now here is a matter that we feel we ought to call to the attention of the Congress," and we would do it, but I could not imagine this Conference in and of itself recommending to the agencies direct anything with regard to overlapping jurisdiction.

Mr. LIBONATI. The only reason I ask is that one of the purposes set out here, that this would give new life and new efficiency to the work of our administrative agencies. And I thought that one of the purposes, to economically direct the responsibilities or the operational effects of agencies in accordance with the unity of agencies, in the same jurisdictional matters, to unify the same as you say here, is one of your basic reasons for the legislation, the unification of the work.

The unification of the work I thought would include the unification of agencies that have concurrent jurisdiction over the same subject matter, although different phases of the subject.

Thank you very much, Mr. Justice.

Judge PRETTYMAN. The only thing the Conference would do would be to make a recommendation to the Congress.

Mr. WILLIS. Finally, I understand—if I am wrong, the witness will correct me—there is a difference of approach as to the scope of the

studies. It is my impression the ABA wants the scope to be broader than does the Budget Bureau. For instance, my colleague from New York questioned Chairman Harris about whether or not the military would be involved. I understand that the American bar would extend the scope to courts-martial and military commissions, and to such functions as military, naval, and foreign affairs of the United States, and personnel matters; whereas the Budget Bureau would want those excluded.

Do you know of that? And do you have any views?

Judge PRETTYMAN. Yes; I know of it, and I have views on it.

Now, I do not think anybody thinks that this Conference would have any jurisdiction over military affairs or foreign affairs. I think that that is out.

The point of difference is that the Bureau of the Budget—I wish I had the text of that before me, but do not—the Bureau of the Budget would exclude certain areas which involve loans and things.

Mr. WILLIS. Involving what?

Judge PRETTYMAN. Loans and contracts. That sort of thing.

Mr. WILLIS. Such as what? It escapes me how it would involve contracts, Government contracts.

Judge PRETTYMAN. Well, the procedure by which Government contracts are awarded.

Mr. WILLIS. Oh. Well that is generally now under GAO, is it not? General Accounting Office?

Judge PRETTYMAN. Yes; I guess. The procedure by which loans, and so forth, are made.

Now, they would cut all of that out of the bill, cut all of that out of the Conference.

Now, our position, sir, is we think this bill ought to be just as broad as the Administrative Procedure Act. And we say—

Mr. LIBONATI. You mean broader than Harris' bill?

Mr. WILLIS. No.

Judge PRETTYMAN. No, I do not think so.

Mr. WILLIS. As broad as the Administrative Procedure Act.

Mr. LIBONATI. Oh.

Judge PRETTYMAN. H.R. 7200?

If you are talking about 7200, 7200 has the exact coverage of the Administrative Procedure Act.

Is that right?

(Discussion off the record.)

Judge PRETTYMAN. The bill which is before us is as broad as the Administrative Procedure Act, and that is the way we think it ought to be.

The Bureau of the Budget wanted to exclude—of course, they will state what they want—they wanted to exclude making of contracts and making of loans, and two or three other matters.

Now, our point on that is very definite and very clear; which is: Why should not a Conference such as this, composed in large measure of Government people interested in procedure, examine the procedures by which loans were made or contracts were awarded?

Why should not that be examined? Why should the procedure for making loans and making contracts be behind closed doors where

nobody can look at it? Nobody can change it—I mean this Conference could not change them but——

Mr. LIBONATI. But, Justice, would not that vest in you a reviewing power of operations of Government?

I can understand why you want to make this a Federal operational unit. You would be more a type of reviewing body then on operations in Government?

Judge PRETTYMAN. No. Let me give you an illustration, Mr. Congressman.

Mr. WILLIS. I think he is agreeing with you.

Mr. LIBONATI. Yes.

Judge PRETTYMAN. Let me give you an illustration.

Right in this area, it came to the attention of the conference that there is what is called a blacklist in Government contracting, and any agency has the power to blacklist a contractor. They could say, for reasons you do not have to know about—and they do not have to give you any statement of the reasons, or hearing or anything, just said, “you cannot have any more Government contracts as far as we are concerned.” And that list is circulated around among all of the agencies, and these contractors are blacklisted.

Now, we said: “Wait just a minute on this, that is not right. That is not the fair and proper way of doing it. If you are going to blacklist the contractor, you ought to give him a statement of the reasons and give him an opportunity to tell his story.”

Now, that’s the right way to do it.

Mr. WILLIS. I am familiar with this.

Judge PRETTYMAN. You are familiar with that?

Mr. WILLIS. Yes. I am familiar with that because I made a speech on that subject.

Judge PRETTYMAN. I hope you supported the position of the Conference. I am sure you did.

Mr. WILLIS. I did not know the Conference had anything to do with it, but I am supporting what you said.

Judge PRETTYMAN. The Conference made a detailed study of that subject and brought in a report, which is as I have said before, if you blacklist a contractor, you should give him a statement of the reasons and give him a chance to be heard.

And it was, I think, unanimously adopted by the Conference, and the procedures have been amended.

Now, that sort of thing with regard to contracts, the procedure for handling contracts, the procedure for handling loans and things, ought to be subject to examination by somebody. That is what we think.

Now, Mr. Chairman, I did not finish what I was going to say about the representative point, about whether these people ought to be representatives. I said in my opinion they have to be individuals for a very simple reason. The subjects that come before this Conference concern procedure. Now, if the man there from the Treasury Department has got to go back, if he cannot speak on the subject, take any position on it, but he has got to go back and find out what the position of the Department or Treasury is on this point, there just would not be any conference; you would never get anywhere in that.

In the next place, you see, I very much doubt if the Department of the Treasury has any position on such a point as that or such things as that. We just think in this Conference, no person ought to act as a representative of the agency from which he comes; otherwise there just won't be a conference.

The idea of the Conference is it is composed of people who know this game, know what is talking place, know all this, and are patriotic people; and they are imbued with their own agency's ideas, of course, that seeps through them. But they as individuals contribute their own character, their own brains to the problem.

Mr. WILLIS. Obviously the jurisdictional scope of this bill under any version is vast. So it leads me to this question: I take it that there is no limit to the life of the Conference and it is contemplated it will be with us for a long time; is that the idea?

Judge PRETTYMAN. That is the idea now. There have been two limited Conferences of this sort, one established by President Eisenhower, and one established by President Kennedy had an 18-month life, specifically. He said "at the end of 18 months." That was for experimental purposes, to find out whether this idea was worthwhile or not.

Both of those Conferences said yes. So this bill would put the Conference on a continuing basis.

Mr. WILLIS. Now, a while ago someone inquired about the cost of this bill. Were we talking per annum cost since there is no limit to its life?

Mr. LABONATI. Yes.

Judge PRETTYMAN. This bill before us contemplates a continuing organization.

Now, let me say this about the cost, the Congress made two appropriations to the Conference. We turned a large part of that money back, didn't spend it.

The basic cost of the Conference would be very, very small. There would be the salary of the Chairman and of the staff, and then the travel money for the outside members not in the government. Nobody gets any pay except the Chairman and the permanent staff—very small.

Now, here is where the money comes in, where we spent the money and where the money of this Conference would go; that is, when we had a specific problem, let us say, for example, the Conference undertook to study the ratemaking procedures of those agencies which fix rates, and the Conference embarked on a study of that general procedure; the Conference hired an expert—they were all university people—hired an expert on a per diem basis, and he went to work and made a study in depth of that subject.

Sometimes it took him 3 or 4 months, and he was paid a per diem. Now, that is where the money would be in this Conference.

If the Conference did not make any studies, there would not be any money. If the Conference undertook some major studies, there would be some money, some cost.

But the amount of the studies the Conference could make would be determined by the amount of money that the Congress wanted to give them.

Mr. WILLIS. One final question, because I do not want to monopolize the time: does the bill provide a time limit within which the Commission should make a report to the Congress?

Judge PRETTYMAN. I think the bill provides a yearly report.

Mr. WILLIS. Oh, does it?

Judge PRETTYMAN. I think it should. I think it does. It is contemplated to report to the President, report to the Congress.

Yes; that's in the bill, Mr. Chairman. That is in the bill, annual report to the Congress and annual report to the President.

Mr. WILLIS. Mr. Kastenmeier?

Mr. LIBONATI. Just a moment. Justice, do you favor the American Bar Association bill, or Harris' bill, or the Senate bill?

Judge PRETTYMAN. I am not going to speak for the American Bar Association, but the American Bar Association's—

Mr. LIBONATI. No; I mean which do you favor?

Judge PRETTYMAN. We are all together.

Mr. LIBONATI. You have been with this subject for 15 years. Now, which bill do you think in your conception will operate in accordance with the goal set by those who have studied this problem, including yourself?

Which bill do you feel meets the measure that will bring about what you determine the purposeful nature of this legislation?

Judge PRETTYMAN. I think S. 1664 would do it.

Mr. WILLIS. Which in turn is H.R. 7200 as amended?

Judge PRETTYMAN. As amended. Now, as to the American Bar and us, the American Bar is here today, but as I understand it, we are together. There is not any difference.

Mr. LIBONATI. Of course, it goes without saying you accept any bill which will open the door to the legislation as contemplated in all the bills?

Judge PRETTYMAN. That is pretty near right.

Mr. LIBONATI. I see. And you think that that one bill incorporates what you feel is necessary to carry out the prerogatives of the legislation?

Judge PRETTYMAN. That is right.

Mr. LIBONATI. Thank you, Justice.

Judge PRETTYMAN. Frankly, Mr. Congressman, here is what I think about it: If this Conference is established and organized, let us say under this bill, time will tell whether it is any good or not.

Mr. LIBONATI. You can always come back for amendments.

Judge PRETTYMAN. That is right, you can always come back. If the Conference turns out to be no good, it will disappear.

Remember the Judicial Conference started out just about like this, it did not have any statute to start with; it was just a conference of circuit judges and they got along.

In the years that went by, they decided they needed legislation—but it grew because it was good. It produced good results. That is what will happen here.

Mr. LIBONATI. Thank you.

Judge PRETTYMAN. If it produces good results, it will be wonderful.

Mr. KASTENMEIER. Mr. Chairman, following up on what Congressman Libonati said, do I understand that you would favor a bill which would not follow what originally you described as being important—namely, that this be an agency conference? If the makeup of the bill that the House would consider were such that it would no longer be an agency conference, nonetheless would you favor such a bill?

Judge PRETTYMAN. If this committee came up with a bill which provided for a conference that would not be an agency conference, I would oppose it.

Mr. KASTENMEIER. You would oppose it?

Judge PRETTYMAN. Yes. I do not think it is any good.

The object of this is to create a forum, a place, machinery by which the agencies can get together and discuss their mutual problems. If they are not going to do that, I see no purpose.

This bill does not do that. This bill puts it in the hands of the President and Council appointed by him, and it will be an agency conference the way I see it.

Mr. KASTENMEIER. The reason I asked that, because we perhaps will have other recommendations which may depart from the agency conference standard that you would propose, and that is why I wondered how you stand on such a bill.

I have another question, in terms of the personnel that you would like to see prospectively invited into the Conference or the Assembly. You described a number of well-known people who make such a contribution.

Do you also foresee the inclusion of people who essentially represent industry which might be regulated by one of the commissions?

That is to say, do you think the Defense Contractors' Association ought to have a member? Do you think the oil and gas industries ought to have a member? Do you think the broadcasting industry ought to have one of their experts as a member of the Conference?

Judge PRETTYMAN. Yes.

Mr. KASTENMEIER. Do you think that this would comply with page 2 of the bill, S. 1664, "assisted by private citizens and others whose interest, competence, and objectivity enable them to make a unique contribution"?

Do you think such members of the Conference would be objective?

Judge PRETTYMAN. Well, there are several answers to that. In the first place, this Conference is not dealing with substantive law; the Conference is not going to try to write any substantive law. It is talking about procedure.

Now, the lawyers that have clients before them know pretty much what the trouble with the procedures are. They are not talking about any one particular case, but they are very objective when it comes to trying to get good procedures, things that will move things along, get a fair answer and that sort of business.

When you pick just two or three or four or five, you get pretty high-class people. There is no difficulty along that line.

And you have them all.

Mr. KASTENMEIER. If that is a test, Judge, can you think of anyone who would not be objective in terms of procedure? The only people who might lack objectivity would be someone subject to such procedures.

Judge PRETTYMAN. I do not think of any class of people who are not what you would call objective in regard to procedure. Maybe if they have a particular case where they want a particular continuance, and so forth, they may not be objective. But such a thing as that in a particular case would never come before this Conference.

Mr. KASTENMEIER. I thank you very much.

Mr. WILLIS. This question occurs to me: Is it true that nowhere does the bill set a numerical limit on the composition of the Conference?

Judge PRETTYMAN. No, there is no numerical limit. The expression of the bill, if I can put my finger on it, is in section 4(b).

Mr. WILLIS. Let us approach it this way: Mr. Harris said a while ago that he thought that the number would be something between 60 and 70. I wonder where he got that figure?

Judge PRETTYMAN. Yes. The Conference that was just in existence had 85 members, including Council.

Mr. WILLIS. Could you see any objection in some experts finding out what the number should be and putting a number in this bill?

Judge PRETTYMAN. I think you would have trouble, Mr. Chairman. The bill names "The Chairman of each independent regulatory agency."

Mr. WILLIS. That is named.

Judge PRETTYMAN. That is numbered. Everyone knows who the independent agencies are.

Mr. WILLIS. That is all right.

Judge PRETTYMAN. The next paragraph:

The head of each executive department or other administrative agency which is designated by the President.

So the provision of the bill is that the President will designate what agencies have regulatory functions, or rulemaking, adjudicatory functions.

Mr. WILLIS. That again, you cannot go beyond that definition anyway.

Judge PRETTYMAN. That is right.

Mr. WILLIS. So that is a limit if one can find out who they all involve.

What about the other members, particularly the assembly?

As I understand, Judge, there is no limitation there.

Judge PRETTYMAN. Now, then, as to the other members, there is no limit in here—and that is where you get to this thing we have been talking about—

Mr. WILLIS. That is what I am talking about.

Judge PRETTYMAN. In this bill, the other members would be selected, that is the non-Government members would be selected by the Council. And the only thing in this bill itself—

other members and such members as will assure full representation of private citizens.

As I say, at one point, we thought about putting in there 60-40, that there be non-Government representation of 40 percent of the Conference, but we finally abandoned that as pretty impractical.

Mr. WILLIS. Do you think that it is appropriate to refrain from specifying the number of these outside members because they will not be paid, except their expenses?

Judge PRETTYMAN. No; I don't think so, sir. I mean I do not think that the payment of compensation would have any effect on these people.

Mr. WILLIS. You missed my point. My point is, as I understood from you, these members would not be paid a salary; they would be paid their expenses. Is that correct?

Judge PRETTYMAN. Travel expenses.

Mr. WILLIS. My point is, is the fact that they are not paid a salary reason enough not to set a limit on their number, for the reason that not much expense is involved?

Judge PRETTYMAN. No.

Mr. WILLIS. This is very unusual, not to put a limit on membership. I have never seen it done before.

Mr. LIBONATI. We could not pass that for ourselves, let alone for strangers.

Judge PRETTYMAN. In the letter to the President from the Conference, our report recommending establishment of this Conference, we suggested that it should be composed of not more than 80 maximum.

Mr. WILLIS. That is why I would like a figure. In executive session, we may have to wrestle with an amendment setting a limit. We want your mature judgment. We do not want to pick a figure out of the air.

Judge PRETTYMAN. The mature judgment of the Conference was 80. You might make it 70, if that is what you think it is.

Mr. WILLIS. Yes.

Judge PRETTYMAN. We are talking about the Assembly, of course.

Mr. LIBONATI. Did not the President set in his directive a number of 50? In 1961, was it, that he issued his directive? President Kennedy?

Judge PRETTYMAN. I do not think so, sir, because we went to 85. I do not think he set it.

Mr. LIBONATI. This is Executive Order No. 10934. President Kennedy established the Administrative Conference of the United States, that consists of a council of 11 members, general membership, and so forth, from the very descriptions of the persons qualified, and that was subject to be not less than 50 persons—be not less than 50 persons. And then it prescribes who the majority of them should be and qualifying situations.

Judge PRETTYMAN. Not less than 50.

Mr. LIBONATI. Not less than 50. Now, of course, the purposes were there to have a representative body, but here now we are appropriating moneys in a set sum, we are asking for an appropriation of a set sum through this enabling act.

Now, how can we possibly expect to answer the question, How much this is going to cost? It is a fact that you can have as many members as are invited. You then must pay travel expenses, and, of course, expenses while they are in the city where you are holding your conferences.

Now, this is a very important item and setting up costs is well known to the Members of the Congress who are well acquainted with that item. In this case it will amount to thousands of dollars. And the question of giving the power to any group or anybody to invite whom they want indiscriminately, just because they qualify to attend a conference, would certainly be stretching our legislative prerogative pretty far in the eyes of the Members of Congress, who demand very explicit limitations on quotas of membership for accomplishing this work.

Therefore it would be most preferable if a limitation were made on the membership, "no less than 50, no more than 200," if you so

desire. Or refer it back to the Congress to approve the number, if you want to send in a list for approval. That way it could be acceptable as a reasonable request.

But ordinarily, Justice, this bill could not pass without this prescription on limitations.

Judge PRETTYMAN. Frankly, from that viewpoint, I had never thought of it. We have fought over the number we were going to have——

Mr. WILLIS. Percentagewise?

Judge PRETTYMAN. Yes, percentagewise, as to who was going to have a voice in the Conference, that is what we were thinking about; not from the other point.

Mr. LIBONATI. When our chairman takes the floor on the passage of this bill, they will ask him that question. He is absolutely "Kaput." He cannot answer the question, and it will defeat the bill.

Judge PRETTYMAN. Heaven forbid that that would happen.

Mr. LINDSAY. Judge, I would like to ask you just three or four questions here. Let me say first that the last time this subcommittee was having a hearing before a group of lawyers and I cross-examined witnesses pretty vigorously to see if there were bugs in the bill; I later received letters from the bar asking why I was in opposition to the bill. I replied by saying that when I argued cases in the Supreme Court, the Justices who cross-examined me the most vigorously usually voted with me, and those who sat there and smiled benignly usually voted against me.

Judge PRETTYMAN. I hope if you give me a bad time, Mr. Congressman, you will hear from the bar.

Mr. LINDSAY. The Senate bill provides that there is a council to be appointed by the President consisting of 10 members. Is that correct?

Judge PRETTYMAN. Yes, sir.

Mr. LINDSAY. Now, who are those council members? Where do they come from?

Judge PRETTYMAN. Wherever the President picks them from.

Mr. LINDSAY. They can be private or public?

Judge PRETTYMAN. Yes.

Mr. LINDSAY. They can be head of the FCC or President of the National Broadcasting Co.?

Judge PRETTYMAN. Yes.

Mr. LINDSAY. They are not paid?

Judge PRETTYMAN. No, sir.

Mr. LINDSAY. They are part time, in other words?

Judge PRETTYMAN. Well, they are just not paid. They get expenses and that is all.

Mr. LINDSAY. It is not a full-time job, however?

Judge PRETTYMAN. No, no, no.

Mr. LINDSAY. Then as I understand it, the members of the assembly are appointed by the chairman of the council?

Judge PRETTYMAN. With the approval of the council.

Mr. LINDSAY. With the approval of the council?

Judge PRETTYMAN. In effect by the council, yes.

Mr. LINDSAY. Then the chairman is all powerful. If he wanted to load it up one way or the other, he could, could he not, assuming

the council went along? If he wanted to load it up so it was predominantly in the private sector, he could; or if he wanted to load it up so it was predominantly in the public sector, he could.

Is that right?

Judge PRETTYMAN. I think theoretically that is so, under this bill.

Mr. LINDSAY. In theory that is true?

Judge PRETTYMAN. Yes. My attitude is as a practical matter, that it is impossible. A council appointed by the President would not come to any untoward result.

Mr. LINDSAY. The person appointed by the President as chairman is absolutely the key?

Judge PRETTYMAN. Yes.

Mr. LINDSAY. If you get the right person, it can be successful; if you get the wrong person, it could be not only a failure, but it could conceivably be a corruption of the public interest.

Judge PRETTYMAN. Well, that would be kind of extreme, if you contemplate the President would pick this person, and be confirmed by the Senate. Yes, theoretically that is correct; the chairman is the key figure in this thing.

Mr. LINDSAY. Then when you are talking about the size of the assembly, of course, this relates very directly on the question of whether it is to be predominantly Government or not; because if you automatically have heads of departments and regulatory agencies, and maybe the general counsel is involved, right away you have got a very, very large group.

Judge PRETTYMAN. That is right. Twice we tried to set up a conference like this: the organization committee that President Eisenhower set up in his administration and the council under designation of President Kennedy. Both times we tried to set up a smaller conference. We would have liked to have had a conference with 50 or 60. But when you get the list of all the agencies that you have got to have in here, just as you say, you have got quite a list to start with; it just comes out somewhere around 80-85.

Mr. LINDSAY. If you have the broader version bill, which includes the Pentagon, all the armed services and all the contracting arms—if you have the Pentagon alone covered—you have a huge area to be concerned about. Their procedures alone could use up the time of the Conference.

Judge PRETTYMAN. They had a member, Mr. Congressman, of this last Conference, Cyrus Vance, who has gone up the ladder since he was a member of this Conference. He was chairman of one of the committees of this Conference.

Mr. LINDSAY. I might say, parenthetically, I am in complete agreement with you on this question of members speaking in their individual capacities. How else are they going to shake the establishment? It is just a vicious circle otherwise, I would think.

Would it be possible for you or for other witnesses here to submit for the record a very detailed statement of the cost of the experimental administrative conferences that were held?

Judge PRETTYMAN. I think we have those figures in the room.

Mr. LINDSAY. Because I can assure you that if we get to the floor with this bill we will be cross-examined down to the last inch on the

question of cost. We must have a record. We should have a submission for the record, if it can be prepared, of projected costs. The Senate bill for example, what might it cost?

If it will be a projection of what is already the experience under the Eisenhower and Kennedy approaches, let us have it. Because we will be asked to point to that on the record if this matter gets to the floor.

Judge PRETTYMAN. We can furnish that very easily. We do not have it in the room but we will furnish it.

(Subsequently the following was received:)

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES,
Washington, D.C., March 6, 1964.

HON. EDWIN E. WILLIS,
House of Representatives,
Washington, D.C.

DEAR MR. WILLIS: During the testimony of Judge Prettyman before your subcommittee yesterday, on H.R. 7200, H.R. 7201, and S. 1664, you requested that the subcommittee be furnished information as to the expenses of the Administrative Conference of the United States established by President Kennedy on April 13, 1961. This letter responds to your request.

As Judge Prettyman indicated in his testimony, the 1953-54 Conference called by President Eisenhower operated without funds. Travel expenses incurred by private members located outside of Washington were borne by those members, and staff assistance and other services were contributed by the participating agencies. For example, the Department of Justice, through the Federal Prison Industries, printed the Conference's preliminary report of January 1954 and its final report of January 1955. Therefore, no accounting of the actual cost of that operation is available.

The 1961-62 Administrative Conference, however, was furnished money for its activities. In order to provide funds with which to operate until an appropriation for the Conference could be considered by the Congress, the Executive order establishing the Conference provided that the participating agencies furnish assistance in accordance with section 214 of the act of May 3, 1945 (59 Stat. 134, 31 U.S.C. 691). Pursuant to that statute the Treasury Department, with the approval of the Bureau of the Budget, established an interagency group fund to which participating agencies contributed \$34,500 for expenditures in fiscal year 1961, and \$30,000 for the early months of fiscal year 1962. In October 1961, the Congress appropriated \$150,000 for Administrative Conference activities during the remainder of that year, and subsequently it appropriated \$100,000 for expenditures during the 6 months of fiscal year 1963 in which the Conference would be in operation. Thereby, a total of \$314,500 was made available for the entire operation.

The 1961-62 Administrative Conference spent a total of \$223,517.20, or approximately 71 percent of the total funds available, returning to the Treasury an unobligated balance of \$90,982.80. A schedule showing the nature of the expenses is attached. These figures do not include the salaries of the Director of the Office of Administrative Procedure, Department of Justice, and two attorneys and two secretaries from that Office, who served as the permanent full-time staff of the Conference. Their services were furnished by the Attorney General pursuant to direction contained in section 4 of the Executive order establishing the Conference. Similarly, the schedule does not indicate the cost to the Government of the time spent by agency personnel in Conference work.

If there is other information which we can furnish, we shall be pleased to receive your request.

Sincerely yours,

WEBSTER P. MAXSON,
Executive Secretary,
Administrative Conference of the United States.

Expenses of the Administrative Conference of the United States, established by President Kennedy by Executive Order 10934, Apr. 13, 1961

	From 1961 inter- agency group fund of \$34,500 ¹	From 1962 inter- agency group fund of \$30,000	From 1962 appropri- ation of \$150,000 (October- June)	From 1963 appropri- ation of \$100,000 ² (6 months)	Total
Personnel:					
Per diem compensation of intermittent consultants and their assistants.....	\$1,100.00	\$8,836.37	\$63,064.64	\$40,567.44	\$113,568.45
Compensation of temporary, full-time employees.....	-----	-----	12,186.43	12,734.40	24,920.83
Personnel benefits.....	-----	11.25	921.90	937.74	1,870.89
Offices and equipment:					
Rent, communications, and utilities.....	-----	-----	314.52	387.91	702.43
Furniture, books, equipment, and supplies.....	3,608.72	33.00	2,461.56	378.95	6,482.23
Travel: Transportation and per diem in lieu of subsistence.....	1,667.61	3,482.46	17,691.45	12,632.73	35,474.25
Printing and other services: Duplicating, printing, and other services.....	105.58	473.70	15,231.75	24,687.09	40,498.12
Total expenditures.....	6,481.91	12,836.78	111,872.25	92,326.26	223,517.20
Unobligated balance.....	28,018.09	17,163.22	38,127.75	7,673.74	90,982.80

¹ Pursuant to sec. 9 of the Executive order, the Treasury Department established an interagency group fund under 31 U.S.C. sec. 691, to which participating agencies contributed to meet the expenses of the Conference until Congress could consider and act upon an appropriation request for this activity. Congress appropriated \$150,000 in October 1961.

² Because the Executive order directed the Conference to finish its work and render its final report before Dec. 31, 1962, funds were needed for only the 1st half of fiscal year 1963 and the appropriation request was reduced accordingly.

U.S. COURT OF APPEALS,
Washington, D.C., April 3, 1964.

Hon. EDWIN E. WILLIS,
House of Representatives,
Washington, D.C.

DEAR MR. CONGRESSMAN: At the hearing the other day before your Subcommittee No. 3 on S. 1664, some suggestions were made that the bill ought to contain limitations in respect to (1) the membership in the Conference, (2) the authorized funds, and (3) the size of the staff. Some of our Conference council thought information along those lines might be helpful. We enclose a memorandum for that purpose.

Congressman Oren Harris, who appeared as a witness before your subcommittee, indicated a similar interest in the same questions. We are, therefore, sending him a copy of this memorandum.

Sincerely yours,

E. BARRETT PRETTYMAN.

MEMORANDUM ON QUESTIONS RAISED IN THE HEARINGS ON H.R. 7200, H.R. 7201,
AND S. 1664

In the subcommittee's hearings on March 5, 1964, on proposals to establish a continuing Administrative Conference, there were questions concerning (1) the size of the proposed Conference, (2) the size of its full-time staff, and (3) the estimated cost of the proposed activity. The experience of the 1961-62 Conference established by President Kennedy, as well as that of the earlier Conference of 1953-54 established by President Eisenhower, have been reviewed as they bear upon these matters. This memorandum, based upon that review, is intended to provide further information with respect to these three questions.

1. THE MEMBERSHIP OF THE PROPOSED CONFERENCE

Notwithstanding the experience gained from the two 18-month Conferences of 1953-54 and 1961-62, it is reasonable to expect that the proposed organization, if established, will evolve to some degree, like any other new organization, during the period of its early operation. In an effort to assure responsible control of the size and composition of the proposed organization, and at the same time, allow the flexibility necessary to permit desirable development, the bills

would place the responsibility for determination of the membership on the President and the 11-member Council to be appointed by him, thus leaving the matter of size undetermined in the organic statute. An adequate answer to the question of size necessarily must be predicated upon an examination of the administrative conference concept, and indeed the concept itself predetermines the appropriate size of the membership within general limits.

The idea of an administrative conference has been some 15 years in the making. Its central thesis is that responsibility for fair and efficient procedures must rest squarely upon the agencies themselves, and not on some extrinsic authority superimposed upon the agencies; that the importance of the administrative process to our national economic development and to the millions of private individuals and business affected by the steady flow of agency rules and orders demands continuing attention to procedural deficiencies, rather than occasional or sporadic efforts toward improvement; that the real hope of substantial gains in this area lies in combined judgments based upon combined experience, instead of myopic individual procedural inventions; that such judgments must have the benefit of the whole range of knowledge and experience in this area of governmental activity, not relying upon the viewpoints of a few scholars or a small group of experts in government; and finally, that the administrative process, now an institution of government, must develop procedural consistency and coordination to assure universality of procedural guarantees, replacing the present fragmentation and resulting uncertainty of concepts of fairness and due process.

The essence of the Conference idea is the comprehensiveness of its intelligence and judgment. To be effective, the experience upon which Conference recommendations are based must be complete, and the deliberations which constitute the development of those recommendations must embrace the whole spectrum of informed views. No individual agency, organization of practitioners, committee of the major regulatory agencies, or combination of executive agencies is equal to the task. Limitations upon participation to a particular segment or segments of the administrative process can serve only as limitations upon the experience which provides the basis for recommendations and upon the extent to which the judgments which go into the recommendations are informed judgments. Current procedural problems are virtually limitless in their number, their importance, and their complexity. Substantial improvement will be accomplished only with the help of all of the interests involved. Therefore, the Conference should include in its membership all of the agencies which have substantial regulatory, benefit, and contracting responsibilities. The conviction which underlies this conclusion is evidenced by the universal support of the Conference idea.

On the other hand, the organization should not be encumbered by the membership of persons only incidentally interested in its subject matter. In fairness to the members who are vitally interested, and in the interests of the efficiency of the organization, dilution of the membership must be avoided. In short, the Conference should be as large as may be necessary to encompass the full range of knowledge and experience, and at the same time, as small as this objective will permit.

Congress has widely distributed throughout the Federal establishment authority to determine private rights and obligations through agency investigations, adjudications, and rulemaking, ratemaking, and licensing procedures. Each of the 10 Cabinet departments has been delegated substantial responsibilities of this nature, and several of these departments have 2 or more separate administrative agencies within them. For example, the Department of Agriculture includes the Agricultural Marketing Service, the Stabilization and Conservation Service, and the Agricultural Research Service, each with a variety of regulatory responsibilities. The Department of Commerce includes the Bureau of International Commerce, with its import and export control programs, the Maritime Administration, and the Patent Office, the Department of Defense, in addition to its vast contract review operations each year determines thousands of cases involving the correction of military records of vital consequence to veterans and their families. The Chief of Engineers licenses construction in and over waterways. The Department of Health, Education, and Welfare includes the Social Security Administration and the Food and Drug Administration. In the Treasury Department, the Coast Guard licenses merchant seamen, and the Internal Revenue Service controls alcohol and tobacco tax permits. The Interior Department includes the Bureau of Land Management and the Bureau of Indian Affairs.

The seven major regulatory agencies within the jurisdiction of the Committee on Interstate and Foreign Commerce represent the core of the administrative process. Other major independent agencies are the National Labor Relations Board, the Federal Maritime Commission, the General Services Administration, and the Veterans' Administration.

Other agencies which should be included in the Conference membership are the Atomic Energy Commission, because of its potential as an important regulatory agency in future years, the National Aeronautics and Space Administration, because of its contracting responsibilities, the Board of Governors of the Federal Reserve System, the Federal Home Loan Bank Board, the Small Business Administration, the Federal Coal Mine Safety Board of Review, the Subversive Activities Control Board, the Railroad Retirement Board, and the Civil Service Commission, because of its responsibilities with respect to Federal personnel problems and their importance in agency operations. In view of the total number of departments and agencies involved, full agency participation would require approximately 50 Conference members from the Federal service.

An essential feature of the Conference concept is that the organization shall have a sufficient infusion of outside experts from the practicing bar, scholars in law and government from academic life, and others specially informed in administrative procedures to assure objectivity and diversity of viewpoint. Again, no mere handful of professors and lawyers can provide the breadth of experience necessary. The number of members who are not Government officials should constitute somewhere between one-third and one-half of the total membership.

Section 2 of Executive Order 10934 directed the 1961-62 Conference to report to the President by December 31, 1962, "suggesting appropriate means" to be employed in the future for the purpose of improving the procedures of administrative agencies. Responding to this direction, the Conference, by letter to the President dated December 17, 1962, recommended the establishment of a continuing Administrative Conference consisting of a full-time Chairman, a Council of the Chairman and 10 other members appointed by the President, and "not more than 80" additional members from Government service and from private life. The total membership contemplated by the recommendation, therefore, was not more than 91. This figure was developed from careful study of the nature and distribution of regulatory and other administrative authority among the Federal agencies. It accords with the underlying concept, and the subcommittee may wish to consider providing this number as a maximum in the bill.

2. PERMANENT STAFF

Because the Conference would be a part-time, uncompensated activity for all of its members except the Chairman, the only permanent staff would be that assigned to the Chairman. In addition to doing the work incident to his functions as Chairman, the staff would serve as secretariat to the Council, the Conference, and its committees. It would conduct research undertaken by the Chairman and would provide the core of the research staff of the various committees of the Conference, working cooperatively with agency employees in the development of information and reports needed by the committees in their studies. It is estimated that these functions will require an Executive Director (GS-17), who will coordinate the work of all of the Conference committees and provide supervision over all employees, a professional staff of four attorneys (two GS-15, one GS-14, and one GS-12), four secretaries (one GS-9, one GS-7, and two GS-5), and one clerk (GS-4).

The total cost for personnel compensation of permanent employees, therefore, is estimated to be approximately \$101,000, plus the salary of the Chairman (\$20,500). Without such staff, it is evident that the Chairman would be unable to perform fully the functions assigned to him by the proposals, and experts and consultants employed on a per diem basis to assist the committees of the Conference would be required to conduct research in Washington which could be performed by full-time employees, at a cost much less than the per diem rates paid such experts and consultants.

The above figure would not be entirely a new expenditure. For the past 7 years the Justice Department appropriation has included an item of \$50,000 for the operation of the Office of Administrative Procedure in that Department. This is the Office which served as the secretariat to the 1961-62 Conference and conducted a part of the research incident to its work. Because the functions assigned to the Chairman by the bills now before the subcommittee include the

functions of the present Office of Administrative Procedure, it is assumed that the Justice Department will close the present Office upon the establishment of the Office of the Chairman.

3. ESTIMATED COST

The 1953-54 Conference called by President Eisenhower operated without an appropriation. Its expenses were borne by its members and by participating agencies, and therefore no accounting of the cost of that activity is available. The 1961-62 Conference, however, was furnished money for its operations, and a fairly reliable estimate of the cost of the proposed continuing Conference may be developed from the 1961-62 experience.

In order to provide funds with which to operate until an appropriation for the 1961-62 Conference could be considered by the Congress, the Executive order establishing the Conference provided for assistance from participating agencies in accordance with section 214 of the act of May 3, 1945 (59 Stat. 134; 31 U.S.C. 691 (1958)). Pursuant to that statute the Treasury Department, with the approval of the Director, Bureau of the Budget, established an interagency group fund to which participating agencies contributed \$34,500 for expenditures in fiscal year 1961, and \$30,000 for the early months of 1962. In October 1961, the Congress appropriated \$150,000 for Administrative Conference activities during the remainder of that year, and subsequently it appropriated \$100,000 for expenditures in the 6 months of fiscal year 1963 during which the Conference would be in operation. Thereby a total of \$314,500 was made available for the entire 18-month operation.

The 1961-62 Administrative Conference, over the full 18-month period, spent a total of \$223,517.20, or approximately 71 percent of the funds available, returning to the Treasury an unobligated balance of \$90,982.80. These figures do not include the salaries of the Director, Office of Administrative Procedure, Department of Justice, or the full-time professional and clerical staff of that Office, which provided the full-time staff of the Conference. Their services were furnished by the Attorney General pursuant to direction contained in the Executive order establishing the Conference. Similarly, of course, no part of the expense of the Chairman's office is included in these figures.

The 1961-62 Conference divided itself into nine standing committees, each with its own subject-matter area. The committees were furnished the part-time services of acknowledged scholars of national reputation, who guided the committees' research activities and prepared committee studies. Some of these scholars had the assistance of younger faculty members and incidental secretarial services on their own campuses. In addition, the full-time staff of the Office of Administrative Procedure was augmented with a few temporary, full-time professional and clerical personnel to conduct research in Washington and to provide necessary services to the several committees. Compensation of these staff members, totaling \$138,489.28 for the entire 18-month operation, represented the largest item of expense. Correspondingly, their contribution was responsible in large measure for the success of the operation, and it seems reasonable to assume that similar employment of experts from academic life will be found to be highly beneficial in the proposed continuing organization.

Past experience has demonstrated that the most satisfactory organization of an administrative conference into committees is accomplished by a division along functional lines. The proposed organization probably should have 9 or 10 standing committees thus constituted, with a few occasional ad hoc committees for consideration of special problems. The number of committees is not likely to be affected by the size of the Conference. Whether there are 65 or 100 members, the logical division into areas of interest remains unchanged. Per diem compensation of scholars employed to conduct research and prepare studies for the use of the committees represents the greatest variable in any estimate of the cost of a conference. As is indicated above, the number of problems which merit attention is virtually limitless. Any committee of the Conference might undertake as much or as little as its facilities and funds will permit. Therefore, no definitive basis for an estimate of the cost of compensation of part-time experts and consultants is possible. Based upon the 1961-62 experience, it may be reasonable to suggest that the estimated cost of this item be set at \$8,000 per standing committee or perhaps a total of approximately \$80,000 per year.

The next largest item of expense in the 1961-62 experience was duplicating, printing, and related services, which totaled \$40,498.12 during the entire 18-month effort. Because the number of committees contemplated is much the

same as in the 1961-62 experience, and since these costs will not vary according to the size of the Conference, it may be reasonable to assume that approximately \$27,000 per year will be needed for duplicating and printing of committee and Conference studies and reports.

Travel expenses, of trips to Washington by private members located in other cities, for committee meetings and Conference sessions, and by experts and consultants from universities throughout the country who conducted research in Washington and attended committee and Conference meetings, represented the third largest item in the cost of the 1961-62 activity. Transportation and travel per diem in lieu of subsistence totaled \$35,474.25 during the 18 months of the operation. Because of the value to that operation of the staff assistance furnished by university faculty members, it is likely that the same kind of staff arrangements will be made by a continuing organization. However, a continuing Conference might meet in plenary session only twice a year, instead of every 3 months as the temporary Conference did, and Council and committee meetings could be expected to be correspondingly less frequent. The number of trips to Washington by university scholars for purposes of research on behalf of Conference committees also would be decreased. Accordingly it may be reasonable to reduce the amount estimated to be necessary for travel to approximately \$18,000 per year.

Office space, furniture, books and equipment, communications, utilities, and incidental personnel benefits amounted to a total of \$9,055.55 in the 18-month experience of 1961-62. Since the Office of the Chairman and that of the secretariat were furnished without cost to the 1961-62 Conference, these items probably should be increased to \$10,000 per annum in the present estimate.

Based upon these figures, together with the above estimate of the cost of full-time staff assistance, the total annual cost of the proposed Conference would be as follows:

Salary of the Chairman-----	\$20, 500
Full-time professional and clerical staff (10 persons)-----	101, 000
Per diem compensation of part-time experts and consultants-----	80, 000
Printing and duplicating-----	27, 000
Travel expenses-----	18, 000
Offices, utilities, supplies, and other expenses-----	10, 000
Total estimated annual cost-----	256, 500

Mr. LINDSAY. On the question of expenses on the Senate bill, I will turn hastily to page 9, I am reading from the Senate bill, line 10 of page 9—

but at rates for individuals not to exceed \$100 per diem.

Does that cover just consultants and experts or also all the members of the assembly?

Judge PRETTYMAN. No; just consultants.

Mr. LINDSAY. Whereas it provides travel expenses of members from the outside, not Government.

Is that just a catchall coverage at the end where it says, on page 10, line 11:

There are hereby authorized to be appropriated such sums as may be necessary to accomplish the purposes of this act.

Judge PRETTYMAN. I thought there was a specific——

Mr. LINDSAY. I beg your pardon. On page 5 of the Senate bill, subsection (c):

Members of the Conference other than the Chairman shall receive no compensation for service, but members appointed from outside the Federal Government shall be allowed travel expenses, including per diem in lieu of subsistence.

I beg your pardon, it is provided.

Next, rather quickly here, on the question of conflict of interest, the Senate bill provides, as I read it, that non-Government members of the Conference shall be considered special Government employees.

There is objection to that from some quarters, as I understand it.

Would you agree that the Senate was right in including that "conflict of interest" provision in here? Or is that something you have not studied?

Judge PRETTYMAN. That is a pretty technical subject, as I understand it.

Mr. LINDSAY. Yes.

Judge PRETTYMAN. And, as I understand it, the Senate bill is correctly phrased.

Mr. LINDSAY. Right.

Judge PRETTYMAN. So that these people would not be deemed to be Government employees.

Mr. LINDSAY. That is right; "special Government employee" means a temporary, part-time person who only serves a limited number of days.

Finally, May I ask this question on the question of the scope of the Conference here: You would agree, I take it, with the scope of the Senate bill, rather than the narrower version that the Bureau of the Budget would prefer to see?

Judge PRETTYMAN. Yes.

Mr. LINDSAY. For the reasons that you stated earlier?

Judge PRETTYMAN. Yes.

Mr. LINDSAY. Why shouldn't we let the Conference go into the question of procedures of awarding contracts, and so forth?

Judge PRETTYMAN. Yes.

Mr. LINDSAY. Thank you very much, Judge.

Judge PRETTYMAN. I am sorry I took so long, Mr. Chairman.

Mr. WILLIS. That is all right. We caused you to, because we wanted the information which you possessed.

Mr. LIBONATI. Thank you, Justice.

Mr. LINDSAY. That is the quorum call, I guess.

I suppose, Mr. Chairman, the question arises now whether we go on with the hearing this afternoon.

I would like to say that the bill being debated on the floor of the House this afternoon is of special importance to me, and I will find it necessary to be on the floor in order to participate in that debate.

So if it is the will of the subcommittee——

Mr. LIBONATI. Are you with the bill or against the bill? We will keep you here if you are against the bill.

Mr. LINDSAY. I am keeping my own counsel.

Mr. LIBONATI. All right.

Mr. LINDSAY. But if it is the will of the chairman and committee to go forward with the hearing this afternoon, I would have no objection to it. I will have to read the record later on and make arrangements to have one of the minority members here in my place.

Mr. WILLIS. Well, of course, I do not want to discommode you if it is your desire that you would like to be here.

Mr. LIBONATI. I think this also is a very important bill.

Mr. WILLIS. Well, we have three more witnesses. We either will come this afternoon or return tomorrow morning.

(Discussion off the record.)

Mr. WILLIS. Will it be satisfactory——

Mr. LINDSAY. It will be satisfactory with me to go ahead either this afternoon or tomorrow.

Mr. WILLIS. We will resume at 2 o'clock this afternoon.

(Whereupon, at 12 noon the hearing was recessed, to reconvene at 2 p.m. of the same day.)

AFTERNOON SESSION

Mr. WILLIS. The subcommittee will please come to order.

We have with us Mr. Harold L. Russell of Atlanta, Ga., from the American Bar Association.

We are glad to have you, Mr. Russell.

STATEMENT OF HAROLD RUSSELL, ESQ., REPRESENTING THE AMERICAN BAR ASSOCIATION

Mr. RUSSELL. Thank you, Mr. Chairman.

Mr. WILLIS. We are glad to have your views on this very important piece of legislation.

Mr. RUSSELL. I appreciate the opportunity to be with you.

I have filed with Mr. Fuchs and the reporter a statement, and in view of the extensive discussion of the matter this morning, I think that I will just ask that the statement be included in the record and then I will go through it and highlight the points in the statement which seem to be pertinent in view of the questions and matters raised this morning.

Mr. WILLIS. That will be very satisfactory, and will be easier to follow.

Mr. RUSSELL. Thank you, sir.

Mr. WILLIS. The statement will be incorporated in the record at this point.

(The statement referred to follows:)

STATEMENT OF HAROLD L. RUSSELL, CHAIRMAN, SPECIAL COMMITTEE ON LEGAL SERVICES AND PROCEDURE, AMERICAN BAR ASSOCIATION

Mr. Chairman, gentleman of the committee, and members of the staff, it is a privilege to appear before you today, on behalf of the American Bar Association, to urge your favorable consideration of S. 1664 as passed by the Senate, the bill to provide for continuous improvement of the administrative procedure of Federal agencies by creating an Administrative Conference of the United States.

Preliminarily, I would like to introduce myself. My name is Harold L. Russell and I live and practice law in Atlanta, Ga. For some 12 years I have been active in sections and committees of the American Bar Association concerned with administrative law, practice, and procedure. I appear before you today as chairman of ABA's Special Committee on Legal Services and Procedure. The duty of our committee to our constituents and clients, the members of the American Bar Association, is to implement ABA's program of improvement and reform in the areas of administrative practice and procedure. A major part of that program is the enactment of legislation providing for an Administrative Conference of the United States.

Although it is hard to believe, the difficulties in securing declarations of policy by the house of delegates of the ABA are not dissimilar to those which attend enactment of legislation in the Congress of the United States. And it may be helpful, to reflect for the record the careful consideration given to this project over a period of many years by the bar, to review briefly ABA's consideration of it.

For many years, at least 15 now, there has been extensive discussion, among lawyers, administrators, judges, scholars, and others, of the possibilities of an administrative conference. The idea, I think, was originally that an administrative conference could do the same thing for administrative law practice and

procedure as the Judicial Conferences were expected to do, and did do, for the Federal court practice and procedure; namely, shorten hearings and records, cut out waste and needless delays, but, at the same time, promote fairplay and due process. After several years of discussion and the observation of the work of the first Administrative Conference called by a proclamation of President Eisenhower in 1953 and chaired by Judge Prettyman, the administrative law section of the ABA at the annual ABA meeting in 1959 presented a resolution which the ABA house of delegates adopted. It called for legislation to establish an administrative conference on a permanent basis. At that time, in the fall of 1959, the house of delegates instructed the special committee on legal services and procedure and the administrative law section jointly to draft legislation on the subject and present it to the house of delegates for approval. Pursuant to ABA rule the draft was required to be submitted to all sections and committees possibly interested in the subject matter to give them an opportunity to express their views and, if possible, to secure their concurrence in the proposal. It was a long, hard task but finally, in February 1963, we presented to the house of delegates at its midyear meeting in New Orleans a draft which was approved by the house almost unanimously. It was a milestone occasion; never before in ABA history had there been such a widespread acceptance of a major proposal in the field of administrative law. The house of delegates instructed the special committee on legal services and procedure, the administrative law section, the mineral and natural resources law section, and the public utility law section to work together to seek the enactment of the legislation presented to the House or legislation equivalent in purpose and effect.

Immediately thereafter, we formed a working group and we went to work. We conferred with Judge Prettyman's group, the Council of the 1961-62 Administrative Conference appointed by President Kennedy. Later we conferred with personnel of the Bureau of the Budget who had under consideration a draft of a bill to establish an Administrative Conference. We also conferred, at a tripartite meeting, with the members of the Council of the 1961-62 Conference and personnel of the Bureau of the Budget. We sought an accommodation of views hopefully to arrive at a draft which could be wholeheartedly supported by all interested parties. We submitted many suggestions to the Bureau of the Budget, some of which were accepted. We rewrote our own ABA bill again and again in an attempt to make it acceptable to the Bureau of the Budget while, at the same time, adhering to our duty to seek legislation equivalent in purpose and effect to that which had been approved by the ABA house of delegates. When it became apparent that no one was going to be entirely satisfied with any of the drafts, Senator Edward V. Long introduced S. 1664, which was a draft prepared by the Bureau of the Budget.

ABA representatives attended the 3-day hearing before the Senate subcommittee, June 12-14, 1963. On the last day of the hearings, we presented three witnesses. We offered our draft as a substitute measure and it appears at pages 124-128 of the printed record of the hearings before the Subcommittee on Administrative Practice and Procedure of the Committee on the Judiciary. We urged many amendments to S. 1664 as it was introduced; and some of our suggested amendments were accepted by the Senate committee and by the Senate and many of them were rejected. However, despite the fact that S. 1664 as it comes to you from the Senate does not incorporate all the changes which we think desirable, we nevertheless consider it a good bill and we urge its prompt enactment.

I appreciate that this résumé of ABA activity in this area may sound somewhat tedious, but the fact is that the measure has received tedious attention from perhaps overly tedious lawyers for several years. It has been exhaustively considered far and wide. My file contains more than 30 drafts of the legislation.

With that background, I will summarize the reasons why the agencies themselves, the executive branch of our Government, the judiciary, the bar, and those of the public who know about it (and there have been some editorials, all favorable) are urging the passage of legislation for the establishment of an Administrative Conference. It is because the Administrative Conference will:

1. Enable the agencies, in cooperation with representatives of the public and in cooperation with other Government personnel, to undertake, in a spirit of mutual helpfulness, critical self-examination of their practices and procedures and thereby provide for solutions for their common problems, the benefits of expedition in action, the reduction of expense in processing their work of both

a formal and informal nature and the preservation and enhancement of fair-play and due process;

2. Provide a "wailing wall," or "escape valve," if you will, for the receipt and consideration of public complaints with respect to the handling of matters by agencies so as to benefit the governmental process through the certain creation of better public acceptance of the agencies and their work; and

3. Through the office of the Chairman, a person of stature appointed by the President with the consent of the Senate and commanding the respect of the public and the agencies alike, afford constant and continuing inquiry into the agency process and assure the means for its improvement and, when solutions and improvements are formulated, provide a person responsible for seeing that they are carried out, to the extent feasible, by the agencies.

I have not heard how much the Government and the public might be saved by the effective work of the Conference and its Chairman. But, a minimum saving can be readily estimated. If there are only 10,000 firms in this country which have the equivalent of only one full-time man devoted to the filing of reports with the Federal agencies, or preparing facts and pleadings and other documents in connection with formal and informal proceedings before those agencies, or devoted to coming to Washington or going to New Orleans or elsewhere for hearings or other business before the agencies, then annually the regulated industries spend 20 million man-hours in their relations with the Federal agencies. That is a number which is certainly smaller than the amount which is actually spent. More than 10,000 firms file reports in Washington and elsewhere with the Interstate Commerce Commission, the Federal Communications Commission, the Federal Power Commission, the Federal Trade Commission, the Federal Maritime Commission, the Civil Aeronautics Board, the National Labor Relations Board, the various agencies of the Department of Health, Education, and Welfare, and the more than 50 other Federal agencies. And thousands of firms have more than the equivalent of one man devoted to fulfilling the requirements of the agencies and to handling their business with the agencies: some have hundreds and a few have tens of hundreds. But, taking the 20 million annual man-hours as a bottom estimate, and applying to it a cost figure of \$25 per hour, which is not unreasonable when it is remembered that each worker must be provided work facilities, space and equipment, secretarial and other such assistance and that a great number of them incur travel or other such expenses, a total cost to the regulated industries of \$500 million is indicated.

If I were Chairman of the Administrative Conference, and I hasten to add that I would have no such ambition because it will be a burdensome and thankless job, I would set as a primary goal for the first year of operation of the Conference a 10 percent reduction in the number of man-hours devoted to fulfilling the requirements imposed upon industry by the regulatory agencies and their practices and procedures; and for the second year I would have a goal of an additional 10-percent saving. In short, I believe that an effective Conference, under an able Chairman, can save regulated industries a minimum of \$100 million annually by the second or third year of operation.

There will also, in my opinion, be comparable savings to the agencies themselves. Every person in private industry preparing reports for, or assembling data for formal or informal agency proceedings, has almost a full-time counterpart in the administrative agencies. But if only 50 percent of the savings which I have estimated for regulated industry could be achieved by the agencies, there should be savings of at least \$50 million per year within a short time after the Conference begins operation.

At the hearings before the Senate committee, the witness for the Bureau of the Budget estimated the cost of the Conference to be in the neighborhood of \$250,000 per year and certainly considerably less than \$500,000. It seems to me that estimate is reasonable and that the Conference, including the office of the Chairman, could operate effectively with a budget in the neighborhood of \$250,000. In any event, the cost of the Conference will be a pittance in comparison with the actual savings which can be achieved.

And, in weighing the cost of any Conference, you will not overlook, I am sure, the intangible, but important benefits, which will result from the promotion of fairplay and due process in practice and procedure. That will be an important work of the Conference which will lead to the restoration or rehabilitation of public confidence in agencies and agency processes. Those benefits alone will be worth many many times the cost of the Conference. Moreover,

delay in administrative proceedings and decisions can be, and has been alleged to be, a construction upon the development of the Nation's economy which can cut the gross national product by hundreds of millions.

You will have available to you, of course, the record of the extensive hearings before the Senate committee and the documents on this subject prepared and printed in the Senate. I am sure your diligent counsel, Mr. Fuchs, has studied them carefully and will bring to your attention materials therefrom which bear upon the particular aspects of this matter in which you may be interested. Therefore, I will refrain from imposing upon your time to bring to you matters which are well covered there. There are, however, two additional thoughts which are not particularly highlighted in the Senate hearings and which I think it wise to lay before you here.

Legislation is needed to establish the Conference and make it effective. It cannot be done effectively by exercising Presidential power under a reorganization act, since there would be no authority to bring in public representatives, the outside of Government people, who are necessary to make the Conference effective. Legislation is also necessary to establish the office of the Chairman and to make that office effective; and all now agree that the Chairman's job must be such as that prescribed in S. 1664 in order to make the Conference a success. Money will be needed to maintain the operations of the Conference and to employ a small staff. It will be appropriate for the Conference to come to you, the Congress, annually to request an appropriation and give an accounting of its work; the alternative, a siphoning of funds appropriated to the executive departments and agencies for other purposes to the Conference would result in Congress having no opportunity for periodic review of the activities of the Conference. There are also very practical reasons for legislation. If one is to expect good performance from the Conference, its duties, its organization, its meetings, its continuity and the necessary followup on its work to see whether the recommendations are implemented by the agencies—all of these things cannot be left to the whim of the agencies or the executive departments. The statute is necessary to define the duties and to provide the prod for their performance. Finally, I think this is too important a matter to be left to an Executive order of the President, although I would be the first to admit that the two previous conferences established by President Eisenhower and by President Kennedy were most successful. The point is that Congress has a vital interest in the performance of the agencies and it is only appropriate that Congress should provide, by statute, for the Conference on a continuing basis with the opportunity which that will afford for annual review of the work of the Conference in connection with appropriations.

Finally, I want to leave with you the thought that the time is ripe for passage of this legislation. The Congress has passed no measure designed to attack, on an overall basis, the problems of administrative practice and procedure since the passage of the Administrative Procedure Act in 1946. The bar and, I believe, the public are anxious to see the problems of administrative practice and procedure receive the same kind of attention as the problems of court practice and procedure receive in the Judicial Conferences. I think it appropriate to note that the Judicial Conferences are established by statute (28 U.S.C. 331, 333). There is no governmental body today having responsibility for continuous attention to administrative practice and procedure; there is no continuity in the sporadic reviews of the subject; and there is no responsibility placed anywhere for effecting economies or improvements among all agencies in their practices and procedures. The need is critical. Every day of delay costs the Government and the regulated businesses of this country alike tens of thousands of dollars.

I will conclude now knowing that Mr. Seidman of the Bureau of the Budget is to follow me with some suggestions to which I probably would like to respond. With the committee's indulgence, I will remain here, hoping that there might be time for some brief comments on what Mr. Seidman may have to say.

Mr. RUSSELL. At the outset, let me say it is a privilege to be with you on behalf of the American Bar Association to urge your favorable consideration of S. 1664 as passed by the Senate.

I was deeply gratified this morning to learn that Judge Prettyman and his Council of the 1961-62 Conference appointed by President Kennedy, believe that S. 1664 as it is presented to you now, is a good bill.

Preliminarily, I would introduce myself. I am Harold Russell of Atlanta, where I live and practice law.

Mr. WILLIS. I understand you and Dick do not get along.

Mr. RUSSELL. When he behaves himself we do. Of course, we in Georgia think he behaves himself more than 99 percent of the time.

Just because somebody else on your committee might read this record, Mr. Chairman, I think I ought to also note I was born in Abingdon, Washington County, Va., which is almost in the 5th District of Virginia—right next door to Governor Tuck—where my family still lives, and I was raised there.

Mr. WILLIS. Did they vote for him?

Mr. RUSSELL. I will tell you, after the Supreme Court gets through with these congressional districts, he just might be our Congressman. We certainly would be for him.

Mr. WILLIS. In his absence, I want to protect his interests.

Mr. RUSSELL. I see. Then because Mr. Lindsay might look at this, I did go to Columbia Law School and lived in the 17th District of New York when I was up there, and also practiced law in New York for a year.

Mr. WILLIS. That is the Republican side, but that is all right.

Mr. RUSSELL. I am a lobbyist in this situation, Mr. Chairman, for the American Bar Association, as chairman of the committee on legal services and procedures, and we are looking for all the friends we can find.

Our duty in our special committee is to promote the bar association's program in the field of administrative practices and procedures and a major part of that duty is this matter of legislation for the Administrative Conference.

Not only have Judge Prettyman and his friends and associates been worried for some 15 years with the matter of the establishment of an administrative conference, but also has the American Bar Association.

About 4 years ago, my special committee and the administrative law section were instructed to draft legislation and present it to the house of delegates for approval, and we were not able to get that done, Mr. Chairman, and we were not able to get that done, Mr. Chairman, until February 1963, at the house of delegates' meeting in New Orleans. I guess you would say being in that place was conducive or helpful to progress, but anyway we got it done there.

Then we got together with Judge Prettyman's group and the Bureau of Budget people and we had two-way and three-way meetings, and, finally, we got a draft in which we tried to accommodate our views to their views.

Now, in the meantime, not without cause I think, on May 1 of last year, Senator Ed Long, of Missouri, who was interested in this project, decided that if he were going to move it, he would have to introduce a bill because it did not look like we could get together with Judge Prettyman's group and the Bureau of the Budget's group; so he did, and that was S. 1664 as it was originally introduced. And it is the same as H.R. 7200, which Congressman Harris talked to you about today.

Now, there were extensive hearings in the Senate. We attended all the sessions and we offered three witnesses. We offered a substitute measure in the course of our testimony in the Senate, and that substi-

tute measure, which is the best that we could come up with, is H.R. 7201, about which Mr. Harris talked to you this morning.

Now, we also urged amendments to S. 1664 as it was introduced and some of them were accepted by the Senate and some of them were rejected. But we do believe, nevertheless, that as S. 1664 comes to you from the Senate, and even though it does not incorporate everything that is desirable, we nevertheless consider it a good bill and we are happy to agree with Judge Prettyman and his Council in that respect, and we urge that it be enacted.

Now, without knowing it, I think Mr. Harris this morning was helping us in one major particular that I would like to comment on right now.

The H.R. 7200, which is the original 1664, actually provided for less authority in the Chairman of this Conference than we have advocated.

Actually we, in the American Bar Association, have advocated a stronger chairman with more authority and more power than was advocated by the Budget people.

Now, the Senate made three amendments in the powers of the Chairman in S. 1664, which make it clear that he has the right to report individually when he thinks it is necessary, and which make it clear that he has the power to make——

Mr. WILLIS. Report to whom, Congress?

Mr. RUSSELL. To the Congress and to the President. Yes, sir. Which make it clear that he has the power to make inquiries into matters which he thinks should be examined and not just preliminary inquiries. Those two things, we think, make S. 1664 in that respect all right as amended. But I want you to know that we stand with Congressman Harris for stronger powers in the director, and that S. 1664, as amended, in our view, is satisfactory.

Now, this matter of the promotion of the establishment of an administrative conference, has been delegated to one committee and three sections of the association.

That was by the action in New Orleans, and I want you to know that we had more nearly unanimous approval of this measure by the house of delegates of the American Bar Association than we have ever had before of any project in the administrative law field.

The special committee, that is my committee, the administrative law section, the mineral and natural law section, and the public utility law section, were all instructed to work together to further this legislation.

And at this point, I would like for you to know that some other representatives of the association are here.

We had here this morning representing the section on public utility law, Mr. Willard Gatchell, who was formerly chairman of that section's committee on administrative law and was for a number of years General Counsel of the Federal Power Commission.

He practices law in Washington now, but he was here and he wanted you to know he was here, and he is very much interested in this.

We have also Mr. James Pinkney, general counsel of the American Trucking Associations, a member of the council of the public utility law section for many years, who is here today.

We have Mr. Ashley Sellers, a prominent Washington lawyer, and member of the house of delegates of the American Bar Association; onetime chairman of this special committee which I have the honor to head now, and more than once chairman, I believe, of the administrative law section of the American Bar Association.

We have Mr. C. Roger Nelson, of Washington, chairman of the administrative law section of the American Bar Association. Mr. Nelson is of the Washington firm of Purcell & Nelson.

I think we have Mr. Charles D. Ablard, of Washington, general counsel of the National Magazine Publishers' Association, a prominent Washington lawyer active in this field.

And then last but not least, I am delighted to have here with me quite unexpectedly my senior partner from Atlanta, Mr. E. Smythe Gambrell, a past president of the American Bar Association.

And with your permission, I would like to ask Mr. Nelson and Mr. Sellers to come up here in case you or Mr. Fuchs or somebody else gets into some questions on which they might like to speak or to which I might be in over my head.

MR. WILLIS. If you would like to have them. Come up, gentlemen.

MR. RUSSELL. Mr. Kastenmeier raised a question with respect to this, this morning: Are the agencies themselves for this kind of legislation? They strongly supported it by communications and by testimony before the Senate committee; in the executive branch of the Government and the judiciary, the bar, and those of the public who know about it—and even though this is not the kind of thing that makes editorials, there have been several editorials I have seen on it, and all favorable.

The reason all of these people are urging passage of legislation for an administrative conference is because, one, this conference will enable the agencies to get together with outside helpful people, with other people from the Government—and, incidentally, you were talking about who might be outside, this morning, technically even someone like Judge Prettyman would be outside because he is not an agency member. But I can think of no one more indispensable for the operation of a successful conference than Judge Prettyman.

They can get together and solve their problems with respect to practice and procedure, provide for expedition and action, and reduction of expense in their work, in both formal and informal cases, and at the same time they can promote fair play and due process.

One thing that has not been mentioned which is important is that the conference will provide a "wailing wall" or escape valve for people who think they have been mistreated by agency action or inaction, and it will help, if you please, the public image of the agencies.

And finally, this fellow who will be the chairman, he will be appointed by the President with the advice and consent of the Senate, he will command the respect of the public and agencies alike.

His office will mean that there will be a constant and a continuing inquiry into the agency process that will assure the means for its improvement. Also his office will insure action when these conferences come to conclusions; he will be the fellow who will be responsible for pushing them into performance and pursuant to the recommendations.

There have been two good conferences, but I would say that of the recommendations made, less than 10 percent have been implemented by the agencies. So we need this Chairman to push them along.

Mr. WILLIS. You mean 10 percent of the recommendations of the conference?

Mr. RUSSELL. Of the last two conferences, Mr. Chairman. The one in 1953-54 and the one of 1961-62. I would say, looking across the board, if there are 100 opportunities for implementation, less than 10 of them have been made.

Mr. WILLIS. Were those recommended with a pretty strong vote?

Mr. RUSSELL. Yes, they were, Mr. Willis.

Mr. WILLIS. Why have less than 10 percent been put into effect? What magical formula can an act of Congress provide?

Mr. RUSSELL. You will provide a chairman whose duty it will be to encourage the people to put them into effect and to report to you on the extent to which they might or might not have put them into effect—report to the Congress, that is.

We feel that will be the spur needed.

Mr. WILLIS. Frankly, I was impressed this morning with Judge Prettyman's statement, which he did not intend to portray that way, to the effect that the troubles about the slowness of the bureaucracy we were talking about involves such things as not preparing your pleadings well, not knowing your case well, not paying attention to the rules, and so on; and that in no instance did he take to task the redtape of the bureaucrat.

It looked as though he was loading it against the practitioners rather than criticizing what was going on within the agencies. Talking about the image that you said you would hope to improve, what can a man from Louisiana do who wants a radio station and has to go through this maze of necessary proceeding here, or a man who wants a TV station and has to hire a Washington lawyer, and it takes months and years?

Or even the cases that come to my office, a man who wants a quick hookup on an "intercom" between his trucks on the highways and his office, and he wants a band, for radio service; that takes months and months?

Speaking of timing, I handle umpteen of them and they always come. They have never turned one down. But why in the devil does it take so long? Why can't they say, "Yes"? Why can't somebody say "yes" or "no" right now?

Is there hope for that man? Because that is the one I am interested in.

Mr. RUSSELL. I think there is genuine hope in this area. I think one reason why you have those unnecessary delays is because the agencies who do similar work, that is the FCC or many others do similar work in issuing licenses of various kinds, with and without hearings, they never get together to consider how they do it, how each other does it or the others do it, and they never compare notes on whether they are doing a good job in comparison with someone else. They never have anyone looking over their shoulder to see whether they are really doing it as expeditiously as they ought to.

If you get them all in the room and get them to compare notes, I believe you will find some agency in the Government doing the same

work in 24 hours that it takes another agency in the Government 6 months to do.

If you get them together, working together, exchanging ideas as to how you can expedite these things, I think from that alone you would secure substantial improvement.

If you have this conference with this chairman drawing out from the agencies, on a regular basis, their performance in terms of how long they take to decide these cases or how long they delay the issuance of these permits, and bringing that type of information to you, and holding these people up to—well, to publicity when they are not doing it as expeditiously as they should, I think you are going to have a helpful thing.

There are also, I suggest, some ways the Conference can be of help to you, Mr. Chairman. I believe if you get this Conference and get this chairman, and if he is the kind of fellow who does the job like it should be done, a whole lot of these people—and I know you love them and I know you want to help them because they are your own constituents, but a whole lot of these people who come to you for relief on these types of things, you can appropriately send them to the chairman of the Administrative Conference and say, "It is that fellow's job over there to try to get things moving along," and it will take a lot of the burden off of you that you have had in that area.

Now, I tried to figure out, and I have it in my direct testimony, just how much a Conference like this might save, and I cannot possibly tell, but I could come to some minimum estimates.

I know that there are at least 10,000 companies, firms, businesses in this country which must have at least an equivalent of one man working full time on its relationships with the Federal regulatory agencies, making and filing reports and all kinds of forms, preparing evidence and pleadings for formal and informal cases of all kinds, coming to Washington or coming to New Orleans for a hearing or otherwise doing business with these agencies.

Now, if that is true, and I think that is a minimum estimate, then there are at least 20 million man-hours a year spent by private industry in its relationships with administrative agencies.

Judge Prettyman said there are 108 of them; I am sure that I could not begin to name them all but there must be at least that. And every one of them requires a mountain of paperwork.

Now, if we figure that there are only 20 million man-hours a year on this and you figure the cost of housing a man, providing him with office space, with secretarial service, and his travel expenses when he has to go to a hearing, and the preparation of his printing, and so forth, and the stuff he has to file with these boards and agencies; and, if you figure it only at \$25 an hour, you have got a total cost of the regulated industries of \$500 million for the relationships with the Government agencies.

That \$500 million in my mind is a minimum figure.

Now, I think that a reasonable goal for an Administrative Conference ought to be in the first year of its operation to cut down on delays, to find better procedures, to find ways of expediting things to the extent that they could, at least, in the first year, cut that down by 10 percent and in the second year by another 10 percent. Now, I believe

sincerely that within 2 years after this gets in operation, that it can save the regulated industries at least \$100 million a year.

And there is a counterpart saving in the agencies themselves; for every fellow who is in industry making up these reports and processing these papers for hearings, or even informal proceedings, you almost have one in the agencies themselves.

Mr. WILLIS. Frankly, I have not digested these bills, but do not be surprised if, after I do, I will find language to put the heat on the Conference itself so that it is not just one more superagency.

Mr. RUSSELL. Right.

I think maybe when you look at S. 1664, you will find something you want.

Mr. WILLIS. I have never seen a bill that had such generalities since I have been in Congress.

Mr. LIBONATI. It is very broad.

Mr. WILLIS. If I can find language to put heat on the Conference, I sure will do it.

In line with what we are talking about, if the Conference cannot be fired up with a firecracker, how are you going to put firecrackers underneath the agencies?

Mr. LIBONATI. Mr. Chairman, along that line of thinking, in view of the differences between Mr. Harris' bill, which is more restrictive in its language and definitions, and this bill, the Senate bill, which is broad in its interpretation of deprivations relative to an agency's powers, don't you find that you might get into the substantive programs of the agencies, and thus take upon yourself a jurisdiction you did not intend to take in view of the fact that these agencies had representatives in this so-called setup that have determined?

I will read that for you, on the question of the definition of administrative procedure; it means:

Procedure used in carrying out an administrative program and shall be broadly construed to include any aspect of agency organization, procedure, or management which may affect the equitable consideration of public and private interests, the fairness of agency decisions, the speed of agency action, and the relationship of operating methods to later judicial review; but shall not be construed to include the scope of the agency's responsibilities established by law or management's substantive policy committed by law in the agency's discretion.

Now, in full compliance with the definite purpose of this provision, certainly you cannot, with one declaratory statement which is in a broad sense acceptable of an operation of an agency and at every one of its levels, say later on, "But we are not going to interfere with their delegated powers."

It is important that whatever we have in the legislative sense delegated to the agency as an operational program—not the delegation of legislative power—then it must be respected.

Mr. WILLIS. Well, that is assumed to be the case.

Mr. LIBONATI. Yes, and so with this other all-inclusive statement in its broadness, you would actually be giving yourself the proprietary right to move in on them on any of their decisions, any of their procedures, and so forth.

Am I correct on that?

Mr. RUSSELL. I do not believe—

Mr. LIBONATI. I mean this discussion is in the nature of a suggestion. But in the type of organization you are setting up, it would be almost

mandatory to be carried out, because you have a regular U.N. set-up here in this bill without limitation of power to review, etc., on membership, and so forth. And under this bill you can take in as many as you want that will favor your position and put the pressure on the Congress to curtail or to expand the so-called operation and management of an agency and all matters that you include here in this definitive interpretation of your jurisdiction, and go into every area of their purposes.

Certainly you will admit that being able to review their decisions is far beyond any conception of our acceptance of giving you this opportunity and responsibility and power?

Mr. RUSSELL. That is right.

Mr. LIBONATI. Am I correct in what I am saying?

Mr. RUSSELL. Yes, you are, sir. But I believe that the last three lines of section 3(c), which you read, would say—

but shall not be construed to include the scope of agency responsibility, or matters of substantive policy committed by law to agency discretion.

Mr. LIBONATI. But that is separative. You first take upon yourself the broad power. Then you say that it must not interfere with this and this; but giving you those broad powers you can later defend your position in interfering in that field if it is sensitive to the purposes that you feel that you have the approval to do.

Mr. RUSSELL. I think you will find that it is going too far. You put your finger on one other thing when you said "purposes for which you are organized." They are set out in section 5 of S. 1664.

If the Conference acts in accordance with those purposes—which, Mr. Willis, are also their duties—they will not get into the matter of reviewing substances of the proceedings, but only the procedural aspects.

Mr. LIBONATI. So what you are creating here by your definition is a block between the legislative powers of the Congress and the powers of the various agencies that are creatures of the law passed for their operative purposes and responsibilities.

Mr. RUSSELL. I appreciate what you are saying. And also let me point to the first line of subsection (c) of section 3, which says: "Administrative procedure" means procedure, and that is what we are talking about; we are not talking about matters of substance.

Mr. LIBONATI. Is that the reason why you do not want to put a limitation upon your membership?

Mr. RUSSELL. Membership? Now, I wanted to come to this because you raised that this morning.

Mr. LIBONATI. That is very important.

Mr. RUSSELL. You also raised the matter of expense. Expense will be only a pittance in comparison with the savings to the Government and public.

We started out with a limitation on the number of people, 85 or 90 members, and before we got through, we had been talked out of it.

It is not to us any matter of great concern so long as there is a full and fair representation of people outside the Government.

If you were going to put a ceiling on it, I do not know what the ceiling would be, but it ought to be high enough so that there would

be no restriction against the appointment of sufficient people outside the Government for outside-the-Government people to be fairly represented.

Judge Prettyman's conference had less than 100. He always says he had 80-some-odd, but incidentally he forgets that he had 3 Members from the House and 3 Members from the Senate.

So actually with alternates, he actually had 94.

We suggested, incidentally, in our bill, which is H.R. 7201, that there be three from the House and three from the Senate, and that the Chief Justice of the Supreme Court be invited to name three members.

But that has been lost, too. That is one of the things we are not taking issue about today. We think it would be better with such a provision, but we did not win it in the Senate and we will compromise on S. 1664.

Now, let me add two more thoughts, Mr. Chairman. The first is—I do not think this has been sufficiently emphasized—that legislation is needed for an effective conference. It cannot be done, in our opinion, by exercise of Presidential power, Executive order, under a reorganization act, since, as I understand it, there is no authority in that situation to bring in public representatives, the outside-of-Government people who are necessary to make the Conference a success.

Legislation is also necessary to give the office of the Chairman the stature that it should have and give him the powers which he must have to prod the agencies and the Conference alike to make it a success.

Now, we come to something which I think is important. Legislation is needed—and I think Mr. Libonati raised this too, legislation is needed because, in our opinion, this Conference ought to have a budget which is provided for by the Congress itself.

There ought not to be a siphoning of funds from the administrative agencies into this Conference in a way that you never know about.

This Conference ought to get its money from you. It ought to come to you each year with a report of what it has done and what it expects to do, so you can see whether it performed in the way you think it ought to perform.

And if they have not, I would say don't give them any more money, or give them a whole lot less.

But that is the practical reason I think, one of them, for legislation, so that you can keep control of it in a way.

I think it is too important a matter to have the President running off by Executive order and establishing a conference without regard to the Congress.

The Congress, after all, I know you gentlemen often say—and some of us as lawyers agree with this and some of us do not—but, anyway, you often say that the agencies are the arms of the Congress, or an arm of the Congress. And if that is so, and I think to some extent it certainly is, it ought to be done by legislation and not by an Executive order.

Mr. WILLIS. Is there a provision in the bill compelling the Conference to have periodic meetings?

Mr. RUSSELL. Yes, sir; it is in S. 1664 as amended, Mr. Willis. That was one of our suggestions, that it be amended to require meetings at least annually, and it is in the bill as amended.

Now, I think that I have about covered everything that I might cover, effectively or not, in the statement.

I do sincerely urge your prompt and favorable consideration of S. 1664.

It has been since 1946, that this Congress passed any measure of overall general applicability to administrative practice and procedure.

It has been almost 20 years since we have had a real step forward in this area. Apparently there is almost unanimous opinion that this will be a real step forward. And every day that the effective operation of this Conference is delayed costs the public, it costs the agencies, and the taxpayers tens of thousands of dollars. That is the reason we say we hope you pass it out as quickly as you can.

I understand Mr. Seidman is to testify later, and Mr. Nelson and Mr. Sellers and I will be around if you would like to ask us any questions now or after his testimony.

Mr. CAHILL. The bill as presently written would appear to establish a permanent commission without any termination date. Is it your thought that this is desirable? Or do you feel that in enacting such legislation, a cutoff date should be established?

Mr. RUSSELL. Mr. Cahill, as a lawyer, you know that the Judicial Conferences of the United States are similar established. We see no reason why this should be different. But we do urge that it be established by legislation and that the Conference have to come back to the Congress each year for its appropriation, so that you can determine then whether it is worthwhile.

Mr. CAHILL. In other words, you feel that the control of the purse strings would, in effect, control the duration of the Conference?

Mr. RUSSELL. Yes, sir. As to that, of course, the criterion of success of the Conference would be the merits of the particular projects which it pursues. Under either bill that you have before you, there is a considerable latitude for the Conference itself to determine what the subject matters will be it will emphasize or give particular attention to.

Now, naturally some of those projects could well be quite time-consuming, quite costly. Others, not so much so. And as the Conference proceeds, it would be expected that they would be acquainting the Congress each year with what sort of projects they have underway, just as is true in any appropriations committee, reviewing conduct of a government.

To the extent that those projects do not address themselves or do not sell themselves, so to speak, to the Congress who is reviewing those programs, why naturally those appropriations would suffer and should suffer.

Mr. CAHILL. Right. Thank you.

Mr. WILLIS. I think that is all the questions we have.

Mr. RUSSELL. Thank you, Mr. Willis. I have just one more thing.

Mr. Max D. Paglin, who is General Counsel of the Federal Communications Commission, is a member of Judge Prettyman's Conference. He was here this morning and he may be here this afternoon—yes, he is. He has done a very informative and enlightening article

on this subject, which appeared in the Public Utilities Fortnightly. I have several copies of it I would like to give to your counsel, Mr. Fuchs, for your examination.

I think it is worthy of inclusion in the records of the hearings.
(The article referred to is as follows:)

[Public Utilities Fortnightly, Washington, D.C., Dec. 5, 1963]

PROGRESS TOWARD PROCEDURAL REFORM

LEGISLATIVE DEVELOPMENTS LOOKING TO AN ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

(By Max D. Paglin¹)

Action taken by the Senate on October 30, 1963, in passing S. 1664, creating an Administrative Conference of the United States, marks a significant step toward realization of a long-sought goal in the field of administrative procedure. If this bill becomes law, we would be at the threshold of a new era in public administration. If this bill becomes law, we would be at the threshold of a new era in public administration.

A little more than 2 years ago, in its September 14, 1961, issue, the Public Utilities Fortnightly reprinted an address of the Honorable E. Barrett Prettyman, senior circuit judge, U.S. Court of Appeals for the District of Columbia Circuit, on "The Administrative Conference of the United States," delivered before the public utility law section of the American Bar Association at St. Louis, in August of 1961. At that time, the Administrative Conference of the United States was still in its infancy. Established by President Kennedy pursuant to Executive Order 10934 (Apr. 13, 1961), under the chairmanship of Judge Prettyman, the Conference—which for convenience will be referred to here as the "interim" conference to distinguish it from the permanent Conference now being considered—was directed to report to President Kennedy by the end of 1962, * * * summarizing its activities, evaluating the need for further studies of administrative procedures, and suggesting appropriate means to be employed for this purpose in the future."

Since the Fortnightly's last article on this subject, important steps have been taken to assure that efforts toward procedural reform will be continued. Notable among those was the issuance by the interim conference of its final report to the President on December 15, 1962.² In that final report, the Conference made some 30 recommendations to the various agencies of the Government and recommended establishment of an Administrative Conference of the United States on a permanent basis. Equally important—and, in fact, indispensable in carrying out the recommendation calling for a permanent Conference—are the five bills subsequently introduced in the Congress³ which propose, in some form or another, to set up such a Conference.

The purpose of this article is to bring Fortnightly readers up to date on the more important developments respecting the interim Conference—what is accomplished, what can be learned from its work, and what prophecies can safely be made regarding any future Conference. Additionally, this article will discuss briefly these various legislative proposals, and particularly the composite bill which has just been passed by the Senate.

The necessity of having some permanent body, whose functions would include a continuing appraisal of the vexing problems of procedure plaguing both Government agencies and private practitioners, is not a new concept. The detailed

¹ The views expressed in this article are those of the author, who is General Counsel of the Federal Communications Commission, and are not to be attributed as the views of his agency. Mr. Paglin was appointed by President Kennedy as a member of the Council of the Administrative Conference of the United States, and later elected as Vice Chairman of the Conference. Mr. Paglin wishes to acknowledge gratefully the assistance of Hilbert Slosberg, Associate General Counsel, and Edward W. Hautenan, senior attorney, Legislation Division, Office of the General Counsel, FCC, in the preparation of this article.

² Reprinted in Senate Committee on the Judiciary, Subcommittee on Administrative Practice and Procedure, "Selected Reports on the Administrative Conference of the United States," S. Doc. 24, 88th Cong., 1st sess. (1963).

³ S. 1664, introduced by Senator Edward V. Long of Missouri, chairman of the Senate Subcommittee on Administrative Practice and Procedure, and H.R. 7200, H.R. 7201, and H.R. 7203, introduced by Representative Oren Harris of Arkansas, chairman of the House Committee on Interstate and Foreign Commerce.

history of the various groups which were appointed to study the problems in this area (including the study of both the feasibility of establishing some kind of continuing organization, as well as of specific administrative problems facing the agencies) has been fully discussed by Judge Prettyman in the article referred to above. That history will not be repeated here.

Suffice it to say that the idea behind establishment of some kind of conference seems to have taken root late in the forties. For over a decade, that idea was nurtured, refined, and built upon through the work of a number of different professional and judicial groups which addressed themselves to this subject matter, including the President's Conference on Administrative Procedure which was convened by President Eisenhower in 1953. It was given further stimulus in the action of President Kennedy in 1961 which established the interim Conference under Executive Order 10934. And over the years, there has emerged from the studies and recommendations of all these groups, a fairly clear picture of the basic attributes of an Administrative Conference of the United States.

Initially, and vital to the successful approach of any study group to the problem of administrative procedural reform, the organization must possess the characteristics both of permanency and continuing activity. As past experience with previous Conferences has indisputably shown, spasmodic efforts, important though their results may be, have proven inadequate to the larger task of providing the continuing appraisal of procedural problems which is necessary to a viable administrative process. Continuity of effort, stimulated and administered on a day-to-day basis by a permanent secretariat, appears to be the only approach which offers a reasonable hope of success. The maintenance of an effective and democratic administrative process requires a constancy of review and evaluation capable of addressing itself not only to present ills, but also to the prevention of future ones. And it goes without saying that the projection of long-range studies, though they may involve the temporary and intermittent efforts of many, must be founded upon the permanency of an organization devoting its full time and attention to these tasks.

VARIED REPRESENTATION

Further, the Conference must be empowered to procure relevant information from Government agencies and to make recommendations to the agencies and reports to the branches of the Government concerned with procedures—the Congress, the President, and the courts. Full and complete data determined by the Conference to be pertinent to its study and analysis of broad procedural problems must be the cornerstone of its proposals, if they are to warrant respect and attention.

Finally, no matter how responsibilities may be divided among the constituent parts of the Conference, the membership of the Conference must include not only representatives of the Government, but persons from groups outside the Government as well; i.e., members of the bar, legal scholars, and persons knowledgeable by reason of their work and experience, in the fields of administrative procedure and Government. Only from such diversity of background, experience, and perspective can we bring to bear the varied insights into our administrative process which can produce helpful recommendations sensitive to the needs of all.

As reflected in the legislation recently introduced on this subject, there seems to be a fairly general agreement that all of these elements are indispensable to any Administrative Conference. However, within these areas of agreement, specific questions give rise to differences of view. For example, the role which the Chairman of the Conference should play, the structural organization of the Conference, the balance to be struck between Government and non-Government representation, the agencies to which any legislation on this subject should apply—differences regarding these and other elements are all reflected in the various bills.

Of course, the basic attributes mentioned above, vital as they are to the framework of the Conference, represent only minimum requirements. Beyond this, the *raison d'être* of the administrative process itself points to other considerations which should be taken into account in completing the design of an effective conference. The search for constant improvement in public administration and administrative procedures should not, and must not, range administrators on one side and a hostile bar or public on the other. What must be recognized is that the needs to be served by proper procedures are not antagonistic. For, on reflection, it becomes apparent that two great and basic objectives are ultimately served by the administrative process.

The first of these is to insure that the business of the Government will be carried out efficiently, effectively, economically, and fairly. Government business ranges over a wide area, embracing as it does the attainment of all those goals which legally have been declared to be in the public interest—the allocation of radio frequencies, the regulation of interstate communications and transportation, the building of power dams, preventing the use of the mails for fraudulent purposes, insuring “truth in securities” and the purity of food and drugs, etc., to name but a few. The importance of carrying out these aims of Government is self-evident, even though the relation of administrative procedure to these ends may not, at first blush, be equally clear. But, on analysis, one can see that the real purpose of procedure, as it relates to the attainment of objectives, is to set the ground rules for the method by which these objectives will be carried out.

TWO PUBLIC NEEDS

The second great need served by administrative procedures is a more personal one, involving as it does the rights of individuals who do business with the Government or are subject to its procedures. Here, what is required is that those whose personal or economic well-being is affected by governmental activities should be protected against arbitrary, unjust, or uninformed exercises of official power. In short, the ground rules which are devised must conform to statutory limitations, and must be fashioned so as to avoid unnecessary expense or delay to those who are subject thereto. Further, once set out, such rules must be observed by the Government and applied with an equal hand. And where an administrator is wrong or has not observed the rules of the game, opportunity must be provided to private parties to point this out.

Thus, measuring these two great public needs—efficient, economical attainment of the Government's goals and basic fairness to private parties—one with the other, it becomes readily apparent that they are not at all (as is commonly supposed) antithetical. Rather, they merge and blend, as they should. For Government procedures which are designed to minimize the risk of abuse or mistake will serve both the ends of efficiency and justice. A balance which falls short of this serves neither side.

Obviously, procedures which bring the Government's work virtually to a standstill are unthinkable, and the costs of such folly must eventually be borne by the taxpayers. Equally obvious, a justice which is swift but despotic, or one which is surfeited with due process but results in bankruptcy, is a sham.

Granted, then, that procedures must be constantly attended to with an eye to striking an acceptable balance between these public needs, who is to carry out this task? Who is to conduct the research and continuing examination of procedures which are obviously necessary? Who is to take time from his regular duties to compare the procedures of different agencies, to assemble data, and venture recommendations?

Obviously, no one person can do this, nor, if history is any satisfactory guide, can any intermittent study group do this. But accumulated experience gathered from the operation of the “administrative conferences” which have come and gone over the past decade or so, points in one direction. It indicates, beyond any doubt, that a continuing body, made up of representatives from the Government agencies, together with a sufficient infusion of outside experts to assure objectivity and a variety of views, set up on a permanent basis, will be best equipped to deal with problems of procedural reform. And such an organization should have a legislative foundation reflecting a broad statutory recognition of the permanency of its task and the necessity for its accomplishment.

NEED OF LEGISLATION

Other solutions have been tried but found wanting for various reasons. The administrators themselves—the members of administrative agencies—have generally been too busy with day-to-day tasks, or too understaffed, or perhaps even unwilling, to carry out major reforms. Congress, important as its contributions have been, is too occupied with substantive legislative policy to do more than take a sporadic look at organizational problems of agencies. As to task force study groups, whose usefulness should not be overlooked, their basic weakness stems from a lack of continuity, plus the fact that their primary concern has been with large-scale Government problems, rather than with the day-to-day functioning of agencies. Finally, there is the President. Undeniably, he has the power and duty to assure proper execution of the law. But, however

true this may be in the abstract, the realities of the situation are otherwise. The President would have to delegate his powers to a "czar," who would immediately find himself beset by a host of problems. The vast scope and complexity of the governmental functions involved could hardly be encompassed effectively by one man. His "directives" would not, in all likelihood, be welcomed by the agencies, while, unquestionably, delicate and basic problems regarding the independence of the major regulatory agencies would be raised.

Thus, there are sound reasons, perhaps even inevitable reasons, why legislation creating an Administrative Conference of the United States and reflecting recognition of the following considerations as to its composition, structure, and objectives, is needed.

First, agencies ought to be afforded the opportunity, and be supplied with the necessary machinery, for an attack on their own problems. Separately, the agencies are too small, too busy, and not equipped to erase all the difficulties and procedural inadequacies complained of by their critics. But the interim Administrative Conference, as well as the President's conference of 1953-54, have amply demonstrated that, collectively, and with outside help, agencies are willing and able to attack the most difficult and delicate problems confronting them.

Second, recommendations for changes in agency procedure are most likely to prove effective if they have the wholehearted acceptance and support of the agencies. Recommendations for reform which come from "the outside" may not receive more than begrudging support, if any. But, as recognized by the interim conference, this objective can best be accomplished if the recommendations originate from a group which includes not only agency-designated representatives, but also others who can provide ready and adequate participation from diverse external sources.

Third, since continuing study is absolutely essential to procedural reform and improvement, it is only logical to provide for a permanent conference. Sporadic inquiries and reports, whether they come from Congress or interim groups, provide no satisfactory answer. Administrations change, personnel are shifted, old problems lose their edge of immediacy, in time the reports of interim groups are overlooked, and eventually they are lost in history. Only by constant observation and the continuing application of "accumulating insight" can reforms be achieved. This seems to be the rule in all other areas of life; there is no reason to suppose it does not apply with equal force to procedural reform.

Fourth, there is a genuine need for study and recommendations which are based on varied interests and specialized experiences. The makeup of the Conference—composed as it will be of Government agency representatives, members of the bar, legal scholars, and other experts—will provide a valuable multiple approach to problems. The experience of one agency can be highly useful to another. If, for example, the Federal Communications Commission has devised a fair and efficient method for processing mutually exclusive applications, there is every reason why such methods should be made available to other agencies which handle such applications. Again, by participating in the Conference, an agency confronted by a particularly vexatious problem may find that other agencies share the same problem, in which case common efforts can be directed toward a solution.

In short, participation in the Conference will permit a cross-fertilization of ideas through a cross section of membership.

AUTHORITY WITHIN ITSELF

Fifth, a permanent statutory body will provide the necessary followthrough and effectuation of recommendations. Reports and recommendations, no matter how useful, are not self-executing. Someone must see that they are carried out. This requires education and persuasion which look to the adoption of recommendations, functions best performed by a full-time Chairman of the Conference. Such a Chairman, clothed with stature and responsibility, will be in a position of considerable influence to implement the recommendations of a Conference, not only because of his position, but because he will carry the endorsement of a group of Government and other experts.

Sixth, it would be preferable that ultimate authority over Conference activities should be lodged in its own assembly. This has a twofold advantage. First, recommendations from a large body, drawn both from the Government and outside groups, will command wider and more realistic acceptance, both within and without the agencies, than would be the case if they came from any single

person. Secondly, by vesting ultimate authority in the assembly, there is avoided any tendency by the Chairman to become arbitrary or unrealistic, or to embark on personal "crusades." Although the Chairman will inevitably be the dominant figure in the Conference, he must at all times be able to command the continuing support of the assembly.

As indicated in the opening of this article, the Senate, on October 30, 1963, following the unanimous approval of the Senate Judiciary Committee (S. Rept. 621, 88th Cong., 1st sess.), passed the bill, S. 1664, creating a permanent Administrative Conference of the United States. The Senate bill, as passed, accords full consideration to the factors discussed above and to the testimony of witnesses appearing in the hearings in June 1963 before the Senate Subcommittee on Administrative Practice and Procedure who also discussed features of the other bills introduced in the House by Chairman Oren Harris.⁴ S. 1664 had its origin in the recommendations of the interim Administrative Conference, in its final report to President Kennedy. These were, in turn, translated by the Bureau of the Budget into the form of a proposed bill, which was introduced in the Senate by Senator Long as S. 1664.

The bill, as passed by the Senate, would establish a permanent Administrative Conference of the United States, consisting of a chairman, council, and assembly. The Conference would be authorized to—

(a) study the efficiency, adequacy, and fairness of the administrative procedure used by agencies in carrying out their programs;

(b) make recommendations to agencies, collectively and individually, and to the President, the Congress, or the Judicial Conference of the United States;

(c) arrange for interchange among agencies of information which may be useful in improving administrative procedure; and

(d) collect information and statistics from agencies and publish such reports as it deems useful for evaluating and improving administrative procedure.

The Chairman of the Conference would be full time, appointed by the President for 5 years, by and with the advice and consent of the Senate.

The Conference would have an 11-man Council, consisting of the Chairman and 10 members appointed by the President for 3-year terms.

The main body of the Conference would be the Assembly, consisting of the Chairman, the Council, and a flexible number of members to be selected by several means. The membership would include the Chairman of each regulatory agency (or a person designated by such agency) and the head of each executive department or other administrative agency designated by the President (or a person designated by the head of such department or agency). It would also contain other appropriate persons; these would include other knowledgeable agency personnel, but it would also include non-Government personnel in such number as will assure full representation of the viewpoints of private citizens and the utilization of diverse experience.

The latter would include members of the practicing bar, scholars in the field of administrative law or government, or others especially informed by knowledge and experience with respect to Federal administrative procedure.

SOME COMMON AGREEMENT

As amended, the jurisdiction of the Conference would be coextensive with that of the Administrative Procedure Act (5 U.S.C. 1001-1011). The Assembly of the Conference would be required to meet at least once annually. The basic powers of the Conference would be to study problems and make recommendations.

⁴ Four bills on this subject, H.R. 7200, H.R. 7201, H.R. 7202, and H.R. 7203, have been introduced in the House by Representative Oren Harris of Arkansas, chairman of the House Interstate and Foreign Commerce Committee. H.R. 7200 is the House counterpart of S. 1664 as introduced. H.R. 7201 is a general bill incorporating the position of the American Bar Association. Both these bills have been referred to the House Judiciary Committee. As the text points out, S. 1664, as passed, goes a long way toward resolving these differences in approach. H.R. 7202 and H.R. 7203 represent the two basic approaches to a permanent Administrative Conference, but limit it to the six agencies under the legislative jurisdiction of the House Committee on Interstate and Foreign Commerce (i.e., the CAB, FCC, FPC, FTC, ICC, and SEC) and have been referred to that committee. Chairman Harris, on introducing these bills, made it clear that they were his "second choice," but added: "I consider the establishment of a permanent Administrative Conference so important that I would prefer seeing it established on a limited basis rather than having no permanent Conference at all." (109 Congressional Record 10801, daily edition.)

The Conference would have no power whatever to enforce such recommendations.

S. 1664, as adopted by the Senate, also eliminates alternate membership, to assure full and continuous participation by the members; requires that annual and interim reports set forth the compliance of the agencies with the recommendations of the Conference; provides that each member of the Conference shall participate in his individual capacity and not as a representative of any governmental or nongovernmental organization; and provides that non-Government personnel shall be considered as special Government employees for certain conflict-of-interest purposes (18 U.S.C. secs. 203, 205, 207-209).

Whatever the final legislative solution, certain propositions emerge on which there is common agreement. First, the time has long since passed when procedural reforms can be left to the haphazard—and completely inadequate—methods of the past. A permanent Conference in some form is necessary.

Next, a Conference can be highly beneficial to both the agencies and to private practitioners. To agency representatives, a Conference brings hope that something better than the present off-again-on-again methodology will be available for coping with procedural problems. Through a Conference, the agencies will obtain a combined testing laboratory and forum for developing new procedures. Ideas can be exchanged, both with other Government representatives and with private practitioners. Solutions found wanting or defective can be rejected at the threshold, without an agency having to go through the trial-and-error methods used now.

It is, perhaps as much as anything else, the lack of such a forum in the past which has precluded overall effective reform in the field of procedure. But, more importantly, as the experience of the interim Conference indicates, such a Conference can serve as a remarkable catalyst for inspiring fresh perspectives to problems of administrative procedural reform, and to encourage and revitalize the recognition of a need for constantly searching out solutions to problems in this field.

To private practitioners, the Conference carries the hope that many of the delays and expenses which are now so common to administrative proceedings can be reduced or eliminated. At the same time, procedures which take into account the substantial rights of their clients can be developed.

Finally, through participation in this joint venture—for that, in essence, is what the Conference will be—both Government representatives and private practitioners will come to have a more sensitive appreciation for the other side's problems. Without such an appreciation, reform seems at best a dubious prospect. And without reform, there are only totally unacceptable alternatives—delay, expense, misunderstanding, suspicion, and hostility. These should not be allowed to continue.

Now, for the first time in more than a decade, we have before Congress, for its consideration, legislation which carries a high degree of promise for bringing about much-needed improvements. Passage of such legislation would put us well along the road of progress toward procedural reform in public administration.

Mr. WILLIS. We will accept it for our files, and we will determine whether or not to make it a part of the record.

Off the record.

(Discussion off the record at which time Mr. Willis withdrew from the room and Mr. Libonati assumed the chair.)

Mr. LIBONATI. Mr. John H. Pratt, Esq., President of the Bar Association of the District of Columbia, will now be heard.

You have indicated a desire to introduce your testimony.

It is admitted.

(Mr. Pratt's statement is as follows:)

STATEMENT OF JOHN H. PRATT, PRESIDENT OF THE BAR ASSOCIATION OF THE
DISTRICT OF COLUMBIA

My name is John H. Pratt. I am president of the Bar Association of the District of Columbia. It is a pleasure for me to appear before you this morning in support of S. 1664, a bill to create an Administrative Conference of the United States.

The Bar Association of the District of Columbia is of the opinion that the establishment of a permanent Administrative Conference is the most effective way to achieve the highest degree of cooperation and coordination among the administrative agencies, other branches of the Government, and all segments of our society. With the rapidly increasing importance of the administrative agencies affecting virtually all elements of our society, the bar association feels that the Congress should give its immediate attention to the creation of an Administrative Conference as provided in S. 1664.

The Administrative Law Section of the Bar Association of the District of Columbia has, through its committees, analyzed and considered the various proposals for the creation of an Administrative Conference of the United States. Additionally, many members of our bar association have individually interested themselves in this matter. Not only is the consensus of the bar of the District of Columbia, which includes such a great number of practitioners before Federal agencies, favorable to passage of such a measure as S. 1664, but the sentiment in favor of the measure is close to being unanimous.

When legislation of this character was in a preliminary stage of consideration, it seemed to many lawyers that a number of major problems were inherent therein. Some of these were:

1. Should the majority of members of the Conference be in the employ of the Government, or should the majority consist of people outside of Government?
2. Could or would the Conference influence decisions of any agency of Government?
3. Could or would the Conference provide a means of executive domination of independent agencies?
4. Would the creation of the Conference merely superimpose another bureaucratic layer on the administrative agencies and thus impede rather than improve their efficiency?
5. How much authority should be vested in the Chairman of the Conference?
6. Proposed answers to some of these and other questions were contained in the various legislative proposals put forward by the Administrative Conference which expired at the end of 1962, by the American Bar Association, and by the Bureau of the Budget. Naturally, there were variances in these solutions.

In our opinion the consideration given by the Subcommittee on Administrative Practice and Procedure of the Committee on the Judiciary of the U.S. Senate, including the hearings held, resulting in S. 1664, has served to place in proper perspective and to resolve the major issues which have been raised.

Perhaps your study of this bill will indicate that additional amendments are desirable or necessary, but as of now, the Bar Association of the District of Columbia has not discovered any substantial defects or faults in the bill which should be corrected, and, therefore, has no amendments to recommend to you.

All of us are aware of the constructive work of the Judicial Conference of the United States. Although the problems of an Administrative Conference will be more difficult and more numerous than those of the Judicial Conference, we believe, nevertheless, that there is good reason to anticipate that, if Congress will create an Administrative Conference, that its achievements will be as substantial as those of the Judicial Conference.

On January 3, 1964, the directors of the Bar Association of the District of Columbia unanimously adopted the following resolution:

"Whereas the recent Administrative Conference of the United States, which expired in December 1962, in its final report to the President, among other things, recommended that such Conference be continued on a permanent basis by appropriate legislation; and

"Whereas the American Bar Association has, for a number of years, also sponsored an Administrative Conference of the United States, to deal with the myriad problems in the field of administrative law; and

"Whereas in February of 1963, the American Bar Association adopted a draft of a bill to create such a Conference and authorized its appropriate agencies to sponsor such bill or legislation substantially equivalent in such purpose and effect; and

"Whereas the Bureau of the Budget also recommended legislation dealing with the subject of an Administrative Conference; and

"Whereas thereafter, this subject was considered by a subcommittee of the Senate Judiciary Committee, which ultimately made a recommendation for legislation, which was approved by the committee in the form of S. 1664; and

"Whereas S. 1664 was thereafter passed by the Senate of the United States; and

"Whereas S. 1664, as passed by the Senate, would attain the principal objectives sought by all of the public and private organizations which have sponsored legislation of this type; and

"Whereas the Bar Association of the District of Columbia is of the opinion that such legislation would be in the public interest: Now, therefore, be it

"Resolved, That the Bar Association of the District of Columbia supports the enactment of S. 1664, or legislation substantially equivalent in purpose and effect, and authorizes the officers of the association to transmit these views to the Congress of the United States and to appear before that body in support of such legislation."

It has been an honor for me to appear before and transmit to you the views of the Bar Association of the District of Columbia, in accordance with the foregoing resolution, and I thank you for the consideration which you will give to the association's position on this legislation.

MR. LABONATI. You may proceed, Sir.

STATEMENT OF JOHN H. PRATT, PRESIDENT OF THE BAR ASSOCIATION OF THE DISTRICT OF COLUMBIA

MR. PRATT. My name is John H. Pratt. I am president of the Bar Association of the District of Columbia.

You gentlemen have just heard from Judge Prettyman and my friend Harold Russell. Both of them are experts.

I have a brief statement to read in general support of S. 1664, the Senate bill.

The Bar Association of the District of Columbia is of the opinion that the establishment of a permanent Administrative Conference is the most effective way to assure the highest degree of cooperation and coordination among the administrative agencies, other branches of the Government, and all segments of our society. With the rapidly increasing importance of the administrative agencies affecting virtually all elements of our society, the bar association feels that the Congress should give its immediate attention to the creation of an Administrative Conference as provided in S. 1664.

Now, the administrative law section of the Bar Association of the District of Columbia—incidentally, our association has almost 4,000 members, of whom approximately 1,000 are members of our administrative law section. This section, this administrative law section, through its committees, has analyzed and considered the various proposals for the creation of an Administrative Conference of the United States. Additionally, many members of our bar association have individually interested themselves in this matter.

Not only is the consensus of the Bar of the District of Columbia, which includes such a great number of practitioners before Federal agencies, favorable to passage of such a measure as S. 1664, but the sentiment in favor of the measure is close to being unanimous.

When legislation of this character was in a preliminary state of consideration, it seemed to many lawyers that a number of major problems were inherent therein.

Some of these might be mentioned.

One, should the majority of members of the Conference be in the employ of the Government, or should the majority consist of people outside of Government?

One phase of that was considered this morning when the question was asked of a couple of the witnesses, particularly Judge Prettyman, as to whether agency people should appear in their individual capacity

and represent and appear as individual members, and Judge Prettyman was very definite on that.

The second question might be: Could or would the Conference influence decisions of any agency of Government?

It has been pretty definitely stated they are confining themselves to recommendations with respect to procedural matters, not substantive matters.

Third, could or would the Conference provide a means of executive domination of independent agencies?

Fourth, would the creation of the Conference merely superimpose another bureaucratic layer on the administrative agencies and thus impede rather than improve their efficiency?

Fifth, how much authority should be vested in the Chairman of the Conference?

Now, proposed answers to some of these and other questions were contained in the various legislative proposals put forward by the Administrative Conference which expired at the end of 1962, by the American Bar Association, and by the Bureau of the Budget.

Naturally there are some differences of opinion in these matters. In our opinion, the consideration given by the Subcommittee on Administrative Practices and Procedures of the Committee on the Judiciary of the U.S. Senate, including the hearings held, resulted in S. 1664, which you gentlemen have before you now, and served to place in proper perspective and to resolve the major issues which have been raised.

Perhaps your study of this bill will indicate that additional amendments are desirable or necessary, but as of now, the Bar Association of the District of Columbia has not discovered any substantial defects or faults in the bill which should be corrected, and, therefore, has no amendments to recommend to you.

I would like to point out again, because all of us are aware of the constructive work of the Judiciary Conference of the United States—I am a member of at least four committees of the Judicial Conference for this particular circuit, and I have watched that organization grow from very humble beginnings.

I am familiar, and I gather you gentlemen are too, with the great work this organization is doing over the country and the great work that it promises in the future.

Although the problems of an Administrative Conference will be more difficult and more numerous than those of the Judicial Conference, we believe, nevertheless, that there is good reason to anticipate that, if Congress will create an Administrative Conference, that its achievements will be as substantial as those of the Judicial Conference.

Mr. LIBONATI. Do you present the idea that the Federal courts and circuit court of appeals have ever advocated any legislation which would weaken their power?

Mr. PRATT. I am not familiar with it, Mr. Libonati.

Mr. LIBONATI. Well, you are a practicing lawyer.

Mr. PRATT. I am not familiar that they ever made that suggestion.

Mr. LIBONATI. You bring it out with this question regarding the domination of this organization by means of persons who would be identified with the agencies. They certainly would not weaken their position, would they? No matter if the suggestion were in the nature of facilitating their efficiency, and so forth, would they?

Mr. PRATT. I do not think, as far as their overall jurisdiction, the scope of the agency itself as created by Congress is concerned, I do not think that any chairman of an agency, any general counsel, would advocate a diminution of that area of responsibility.

But, as has been pointed out several times this morning, with respect to matters of procedure, with respect to proposals to increase the efficiency, the ability to get work done, and the creation of an attitude of confidence on the part of the public, which, after all, is the recipient of the action of these various agencies, that a man will—

Mr. LIBONATI. All I am trying to do now, the crux of your problem here is on the question of how you are going to identify the elasticity of the membership, which is in the power of the chairman, and other methods of selecting the members, without some identification as to their prime interest as members of the organization, and whether you feel that even though there are persons who are serving in official capacities in these agencies that this man or person works for, how do you think he is going to act—what point of view he is going to take?

Mr. PRATT. Well, Mr. Chairman—

Mr. LIBONATI. I am talking about the practical application of what we are considering.

Mr. PRATT. That is what I would like to address myself to.

Let us take the little matter, such things as rules of practice, rules of procedure for a particular agency.

There are no two of these agencies that are precisely alike. Some agencies have tended to follow the pattern of other ones, but no two are precisely alike.

Now, I think that if you have got an agency—the same as in the transportation field—that had a reputation for handling its work with dispatch, and it could be pointed out that part of this result was due to the type of rules that they had in terms of the pleadings required, the various time limits that were set, the procedure with respect to a decision by a hearing examiner being final unless challenged, and all of that type of thing—and I am necessarily talking in broad terms—I think some other agencies, just by virtue of learning about this type of thing, and recognizing that they are not giving up a thing if they adopt then this kind of a procedure, might very well become convinced that their best interests lie in adopting something along the same line. But they will not know about it unless they get exposed.

Mr. LIBONATI. We have hearings on a bill here where the American Bar Association demands every lawyer who presents himself before a certain two of these agencies should be permitted to practice without any special accord to his status, or his knowledge of the specialization in which he is now going to plead.

Do you think that these agencies would succumb to that type of askance in the way of procedural preference to be given the lawyers who must not prove they are qualified to practice before those two agencies, in these specialized matters? One is Revenue and the other Commerce. And later on, try to foreclose any person who is now eligible, for instance, a certified public accountant or accountants in general, who now practice before that group?

You see, you are on very delicate grounds even in procedures.

Mr. PRATT. Well, I think conceivably—and I think you are referring to Senator Long's bill, which I think passed the Senate with respect to this matter of lawyers being eligible to practice before various agencies as long as they have been admitted to the bar of the highest court of their State without conforming to particular rules of the agencies.

Mr. LIBONATI. Now, I am only eliciting these answers from you, not to show any partisanship as far as my attitude is concerned, but we have to, in specificity, apply this law in its practical attainments in operation. And we have these other matters before us. There was a highly controversial bill here, which we still have, I think, under consideration, have we not, and the American Bar Association was very adamant about this on the basic prescription that a lawyer is entitled to practice law before any body without any special rules to permit him to show special qualifications to practice before that bureau or that agency.

Do you understand?

Mr. PRATT. I am familiar with that.

Mr. LIBONATI. So that I am just trying to bring out some of the poignant facts that confront us in legislation which we are to make determinations on, questions that would primarily come before this organization which you are seeking to establish. You understand what I am getting at?

Mr. PRATT. I understand.

Mr. LIBONATI. And you must realize this, that we have to determine the general area of coverage, the application of the specific intent that this bill provides and what it affects, and what pertinent questions will be presented in its practical application.

Unless it is definitive to the point then there can be only limitations—and that is all we look for, limitations—in its application; otherwise we are at a loss to pass a bill if it is too broad and if its application is impractical in its acceptance by the Congress. The gentlemen on this committee are lawyers and pretty well versed in their various specializations in the law, as I think you know, Mr. Pratt. Correct?

So I would like to have you as a member of the most important body, the District of Columbia body, which is confronted all the time with these problems, who are retained by other lawyers as lawyer's lawyer, to give us an honest, declaratory statement of what you think that this bill should do, should in its conception touch, and should in its definitive sense avoid.

Because it probably affects you more than any other group of lawyers. You are here on home grounds facing these agencies and bureaus, and probably among your ranks of the 4,000, there are 1,000 specialists, who know more about the operation of the agencies and bureaus and the fallacy of the system than anyone else.

I am talking about the practicing lawyer—outside, of course, the judges of the courts.

I would like to have you point out the pertinent questions that were asked here by the chairman relative to the limitation on numbers to be given appointments here, and these other questions, in order to determine whether or not—I will tell you right now, we are not satis-

fied with the Senate bill, unless you make definitive limitations on the question of membership and the selection to the point where you will not have a top-heavy group that are not representative of the practicing bar and are more representative of the agencies, and so forth, then you would be at a status quo as far as accomplishing anything, if you are going to be set at dead center controlled by the people you are trying to change, in their operations and in their attitudes, and in the assumption of changes in the way of legislation which you will recommend to us.

Am I clear on our position? I ask you to clear up these matters if you can.

MR. PRATT. Mr. Chairman, you have, I think, probably included a number of questions in your statement.

I would like to speak briefly as an individual and be as responsive as I possibly can to some of the points you have raised.

I think, in looking at the legislation that is now in front of you, and with particular reference to the membership of the assembly and the council and the method of appointment and the number involved, I think it is important to take a look at the history of the two previous Conferences, the one of President Eisenhower and the one of President Kennedy, both with which Judge Prettyman had a great deal to do. If we were concerned with matters of substantive law, I think I would be quite worried about such things as agency domination. I would think that any legislation would have to specifically set forth, maybe in terms of percentage, the number of so-called public members or private practitioners who conceivably might be represented; but as I understand—

MR. LIBONATI. I think you will agree Federal Judge Prettyman brought that out when he spoke here on the question of substantive law.

MR. PRATT. That is right. But I think when you have got a question of procedure, what you are thinking about is a clearinghouse of experts to try to analyze the problems that are confronting administrative agencies in terms of their own efficiency. And it would be just as simple as that.

I think that the people who are as knowledgeable on this subject are the people Judge Prettyman talked about. Not only the people that run these agencies and their general counsel, of which we have 108, but also the law professors, the political scientists, as well as private practitioners.

I do not think because a man is a general counsel of a particular agency, that he is necessarily wedded to their procedure, if it were demonstrated to him that their procedure has resulted in a backlog of work that might take him 5 years to get through.

The Federal Power Commission is a perfectly good example of that. They have a backlog that extends years and years and years, and, so I am told, is getting worse. They are doing their best at the moment by various devices, particularly in rate cases, to cut down on this backlog. But I think that that problem is one that faces other agencies as well.

I think that any general counsel would be delighted, if the way would be pointed out to him, whereby the efficiency of his group, his agency, could be improved.

I think that setting up the machinery, such as this legislation provides, even though it has a preponderance of agency personnel, I think is very much a step in the right direction.

And bear this in mind, too, what we are talking about is something that, although permanent legislation is envisaged, it is something that the Congress in its wisdom at any time can call a halt to.

You would hold the purse strings. Any time you want to cut off the water, you can do it perfectly well. And I would think that this committee, among others, would be very much interested in looking at the reports that came in every year.

Gentlemen, it seems to me that the benefits, the possible benefits from this, and the need of such benefits, are so overwhelmingly apparent in a number of areas that almost any step—and the expense envisaged is relatively small compared with the savings—is something that you would seriously consider.

Now, there are a number of other things, Mr. Libonati, that you have alluded to. As I said before I made these comments, I do not profess to be an expert on these matters, such as the two gentlemen who preceded me, but I am speaking as an individual with, I think, a certain reasonable amount of contact, not only with the Federal agencies but with the courts and other branches of the Government here.

I would not be worried a bit about this preponderance of the agency personnel, because we are dealing with matters of procedure.

I think I would be very much concerned if this were a matter that concerned problems of substance. Problems of substantive law. You do not have that.

MR. LIBONATI. You understand the legislative branch has a hard time guarding and limiting the agencies to their initial powers that were granted to them through legislative enactment.

MR. PRATT. I know that.

MR. LIBONATI. They try sometimes innocently or intentionally to overstep those bounds.

MR. PRATT. That is right.

MR. LIBONATI. I do not think that the measures before us are complete.

But they are not complete if we do not have limitations upon the personalities that are going to motivate the program and responsibilities that are vested in their group under this law.

And you cannot very well expect the passage of an act to give indiscriminate powers to a group who are given power of appointment to an innumerable number of members for the purpose intended.

I mean every piece of our legislation, except the draft law, is enumerated on limitation. Especially if it requires an appropriation.

You can see the incongruities in any legislation accepting a blanket power to just appoint membership in accordance with what some person feels is necessary, without any rational control in the legislation itself.

I am only fair with you in this respect because, after a bill is passed out of this committee, it is expected on the floor that there be very little debate over its expressed specificity of intention or its language, or the limitations upon it to exert a reasonable activation of its own purposes for the accomplishment of those purposes.

I am honest with you, as the chairman was when he discussed the question of answering on the floor that any such organization that

would expect an unlimited appointive power of its membership and appropriation thereto, whether it amounted to \$10 a person or \$100 would not make any difference.

So that in the practicalities of this problem we have here, it is primarily not with the principles of the bill, which our distinguished Federal judge, Mr. Prettyman, propounded here, because he most substantially knew what these matters entail in legislative responsibility and legislative appeal; but primarily on those levels that must be defined, and under limitation.

Do I make myself clear?

Mr. PRATT. Yes. I would like to respond to that very briefly.

I take it, Mr. Chairman, you are worried about not only the absence of a limit in terms of numbers, but you are also concerned with the lack of specificity with respect to the type of personnel that the Council of 10, with the Chairman, will appoint.

I think that question is more imaginary than real, and I will tell you why. This is not a matter of having 70 to 80 or 150 jobs. These assignments for the most part are strictly pro bono publico. If you are the general counsel of an agency, you have a full-time job in your agency. And any time that you spend as a member of an administrative conference is time out that you have got to take from something else and you have got to compensate for it somewhere later on.

For the public members, for the members of the bar, for other people, for these schoolteachers, these law school professors, this is something they do out of an interest to see a problem solved.

It is a public service. They are not getting paid for it. So it seems to me you are not faced with a proliferation of appointments; you are not faced with the problem of a number of people wanting to get appointed to these jobs. It is an honorable assignment, but it is a burdensome assignment.

And I think anyone that can be persuaded to take on this kind of a job deserves a pat on the back. As far as the thing getting out of bounds because of there being too many, I do not think there is any possibility of that taking place.

I may be wrong, but that is my opinion.

Mr. LIBONATI. You do not have to take my word for it; I am just trying to guide the situation.

Mr. PRATT. Yes, sir.

Mr. LIBONATI. I know Congressmen go to the seven seas and have briefings of 8 to 10 hours a day from experts who receive us, and the Congressmen live in bivouacs and all types of places. They spend their money on many items that are not covered by the Government's rules and regulations. Then upon their return—maybe we spend anywhere from \$800 to \$1,000 of our own money—why, we are accused of being on junkets. We make our reports, which probably cover anywhere from 100 to 200 printed pages, as this committee does, and I have written on the neighboring rights and others—you have seen those reports.

Mr. PRATT. Yes, sir.

Mr. LIBONATI. We take down notes for 8 or 10 hours a day, persons who are speaking in a foreign language, which is translated for us on earphones.

These very same men are sitting here now, and you sponsor before them legislation of this type. On their reports they show you what it costs the Government for incidental expenses, fares, and hotel bills and meals, within the \$15 or \$20 a day bracket—also cab fares and tips, and so forth.

It is very important that every piece of legislation that the Government knows who went where and what was spent. And so in this bill we need specificity for costs.

Mr. PRATT. Many years ago I was a page in the Senate, and those of course were then, as they are now, paid jobs. The number of applicants that were interested in those jobs of course were numerous. As a result, there is a limitation on the number that you can appoint.

But you do not have that problem with this. I think you will have some difficulties persuading people like Professor Nathanson, and some of these others, to be able to tear themselves loose from their heavy work and teaching schedule to give their time to this kind of an enterprise.

Mr. KASTENMEIER. Will the chairman yield?

Mr. LIBONATI. Yes. The gentleman from Wisconsin.

Mr. KASTENMEIER. Chairman Libonati, and I think to some extent Chairman Willis before, indicated some apprehension to at least a couple of witnesses, that the agencies, or at least representatives of the Government, would tend to overload this Conference, and that Government bureaucracy, et cetera, ought to be a subject for others as well.

I think there is also concomitant fear that, indeed, some of the private interests might well be at least as pernicious, in these terms, as would a preponderance of Federal officials, perhaps not the individual practitioner from Louisiana or elsewhere, or even an individual practitioner from Washington as such, but only insofar as he becomes industry representative, association lobbyist, or attorney for a group of clients who, in a sense, regard the commissions and the agencies in an adversary light, as illustrated last week by the broadcasting industry versus the FCC, commented on by a cartoon in the morning Washington paper most eloquently.

Really it is not the agency or the Commission politically that has the power. If we were to curry favor, as Members of Congress, it would not be with five or seven Commissioners, let us say, as opposed to the American broadcasting industry, quite obviously.

So politically I do not feel, in terms of where power lies or construction of commissions or conferences, the fear would be so great that the agency personnel would so dominate it as to perhaps destroy or hurt its usefulness.

But I do wonder about some of the outside interests. I wonder, despite Judge Prettyman's suggestion that this deals with procedures rather than substance, if the point really isn't that by changing procedures you can change a great deal.

We know this from an item as controversial as the civil rights bill. We changed in some instances procedures by statute. This will weigh heavily on the substance of, say, the equities in terms of civil rights.

I am wondering whether you would not agree that procedures, and changing procedures, can affect substance and can affect ultimately major considerations in terms of agency dealings with others?

Mr. PRATT. I would ask the Congressman to be a little bit more specific.

I think, as a general proposition, it is perfectly possible to get procedural matters of such an importance that there is a very fine line between what is a matter of procedure and what is a matter of substance; but if Mr. Kastenmeier will point out a particular matter, I think I might be able to comment a little bit more intelligently.

Mr. KASTENMEIER. I do not think I am competent to discuss procedures within the regulatory agencies.

By alluding to civil rights, I had in mind giving the Attorney General the discretion to bring voting cases before a three-judge court rather than a Federal district court.

Mr. PRATT. Yes.

Mr. KASTENMEIER. This was for a very obvious reason. This was only procedure and had nothing to do with the merits of the case. These were voting cases—particularly in the South. This was a change in procedure which is going to change substantially, presumably, treatment of voting cases in the South and to some extent the outcome. We have no doubt about that.

Mr. PRATT. Well, carrying that one step further, the power of a Federal judge in the South to punish for contempt with or without a jury trial—which is the problem, of course, the Supreme Court has now with regard to Governor Barnett—that is a procedure. But the determination of that question may determine the whole outcome of the case.

Well, it is difficult to translate that type of problem into the kind of a thing that Judge Prettyman is talking about. At least, it is for me. It may be possible, but I do not see it at the present time.

Mr. KASTENMEIER. Do you think this will be designed largely to promote efficiency and expedition.

Mr. PRATT. I think it is a promotion of efficiency, at the same time preserving all of the elements of due process. I am thinking of proper notice, proper hearing, opportunity to cross-examine, and that type of thing. And I think what has happened is frequently we have carried our notions of due process so far that some of these proceedings, some of these matters have gotten completely out of bounds.

Look at the records in some of these administrative hearings, in the repetitive nature of the testimony, the cumulative nature of the exhibits and that sort of thing. You wonder how an administrative process can survive that type of thing.

I am sure that is the type of thing they are talking about.

Mr. KASTENMEIER. But again, you do not see that change in procedures would affect substance or outcome?

Mr. PRATT. The purpose and functions of administrative conference? No, sir I do not. With respect to the matter that the Chairman raised that has been raised before, in view of the scope of the administrative conferences, as stated, it does not bother me that a preponderance of the people composing the conference come from the Government agencies affected.

I say that as one who has never worked for the Government except for the one time I mentioned.

Mr. KASTENMEIER. Thank you.

Mr. CAHILL. May I ask this question?

Mr. LIBONATI. Yes.

Mr. CAHILL. Is it your experience as a Washington attorney that the regulations of these individual agencies are usually formulated and promulgated without any considerations to the overall regulations of other agencies?

In other words, there is lack of uniformity?

Mr. PRATT. I think that is very definitely true. Some of them start off initially being patterned after another agency. For example, the regulations I think under the Motor Carriers Act were very closely patterned after the Interstate Commerce Commission, of which the Motor Carriers Bureau is a part.

Mr. CAHILL. It apparently is your experience that each individual agency on its own initiative without consultation revises and expands regulations in order to suit their particular purposes. If so this would create great confusion in the minds of the practitioner, who must learn the rules of all of the regulatory agencies?

Mr. PRATT. I do not think, Mr. Cahill, the problem of the practitioners, sir, is the important one. I think any lawyer worth his salt can learn what the rules are.

But as far as the promulgation is concerned, it is done, I think, by individual agencies almost operating in a vacuum, without reference to what the other people do.

Mr. CAHILL. Whereas it is your thought that this conference might develop some system of uniformity?

Mr. PRATT. Well, some system of handling specific problems maybe within the framework of their existing regulations. I would say the problem Judge Prettyman talked about, the matter of delay, which can happen in various phases of the whole process, that is the problem.

Mr. CAHILL. Thank you.

Mr. LIBONATI. That is all, sir. Thank you very much for your contribution.

Mr. PRATT. Thank you, gentlemen.

Mr. LIBONATI. Mr. Seidman is the next witness. Mr. Seidman, do you care to file a report?

**STATEMENT OF HAROLD SEIDMAN, ACTING ASSISTANT DIRECTOR,
OFFICE OF MANAGEMENT AND ORGANIZATION, BUREAU OF THE
BUDGET; ACCOMPANIED BY MISS HAZEL GUFFEY**

Mr. SEIDMAN. I have a prepared statement, Mr. Chairman, and with your permission, I will read it. It is not a very long statement.

(The statement referred to follows:)

**STATEMENT OF HAROLD SEIDMAN, ACTING ASSISTANT DIRECTOR, OFFICE OF
MANAGEMENT AND ORGANIZATION, BUREAU OF THE BUDGET**

Mr. Chairman and members of the committee, I appreciate this opportunity to give you the views of the Bureau of the Budget with respect to the three bills you have under consideration to create a permanent Administrative Conference of the United States.

The language of H.R. 7200 and of S. 1664 as originally introduced in the Senate was drafted in the executive branch to carry out a recommendation of the recent Administrative Conference that a permanent conference be established by law. In testimony at the Senate hearing on S. 1664, the Deputy Director of the Bureau of the Budget expressed the Bureau's support for a statutory conference along the lines of that bill. Therefore, I believe it would save your time

if I limit my general statement today primarily to certain problems raised by the Senate amendments to S. 1664 which we believe warrant earnest consideration by this committee. Those amendments are as follows:

1. The word "predominantly" was dropped from sections 4(b) and 6(b) of S. 1664. Those were complementary provisions which would assure that the Conference and its executive committee, the Council, would be composed predominantly of Federal officials and personnel. A related amendment to section 4(b) (6) provides for "full," rather than "adequate," representation of the viewpoints and diverse experience of persons from private life in the Conference membership.

2. A new provision in section 6(e) would direct each member of the Conference to "participate in his individual capacity and not as a representative of any governmental or nongovernmental organization."

3. The provisions of section 3 of S. 1664 which would have directed the work of the Conference primarily toward regulatory programs in which Federal agencies perform quasi-legislative or quasi-judicial functions were eliminated or amended. As a result, the Conference would be given a broader scope, exactly how broad apparently being a matter of some uncertainty.

These amendments, taken together, would change the character of the proposed Conference so basically as to cast serious doubt on the desirability of its creation under Federal law. As introduced, S. 1664 and H.R. 7200 would have established an official agency of the Federal Government. The bills were designed to carry out the Conference recommendation that a permanent Conference be constituted primarily as an interagency body through which the agencies themselves could work to improve their administrative procedure. The proposed membership of the Conference would have been consistent with that intent. However, to promote objectivity and fresh ideas the bills also provided for the membership of private persons uniquely qualified to provide expert advice and responsible criticism.

The Senate made no changes in the purpose of the bill as set forth in section 2(e). Nevertheless, the amendments to sections 4(b) and 6(b) would make it possible for the Conference, an official Government body, to be dominated by private parties, who could use the Conference as a sounding-board for private interests. That possibility is reinforced by Senate Report No. 621, which emphasizes that the President should have discretion in appointing Council members and that the ratio of Government to non-Government personnel in the Conference as a whole should be left to the Chairman and the Council. It is further reinforced by the Senate amendment which would require "full," rather than "adequate," representation of the viewpoints of private citizens. When these amendments are taken together, it could reasonably be argued that the intent was to reverse the original concept of a Conference primarily of and for the agencies to enable them to help themselves. The amendments could subject the Chairman and the Council to unnecessary and time-consuming pressures, since it is the Chairman, with the approval of the Council, who would appoint members of the Conference from private life. In addition, the amendments would create practical problems in establishing a Conference of workable size.

Proponents of a permanent Administrative Conference rely heavily on the Judicial Conference of the United States as a precedent. That Conference, of course, consists entirely of Federal judges. The Chief Justice himself summons the Conference and is its presiding officer. There is no question that it is an official body, the instrument through which the judges themselves seek to improve the operation of the courts. The viewpoints of private citizens on particular matters are obtained through special advisory committees or study groups, which make recommendations to the Conference.

The temporary Administrative Conferences called by President Eisenhower in 1953 and by President Kennedy in 1961 departed from the precedent of the Judicial Conference of the United States by providing for appointment of members from private life. In both Conferences, however, their official character was recognized through the appointment of a majority of members from the Federal agencies. The value of outside participation was demonstrated in those Conferences; that should not, however, cause us to forget that improvement of procedure is chiefly dependent on action by the agencies themselves. We believe the organization of the Conference as defined in law should underline, rather than dilute, the official responsibility of the agencies for assuring that desirable improvements are identified and made by them when possible or recommended to Congress if legislation is necessary.

In addition to the amendments affecting its composition, the official character of the proposed Conference is further weakened by the amendment in section 6(e) which provides that each member of the Conference shall act in his individual capacity and not as a representative of any governmental or nongovernmental organization. This is an unrealistic provision insofar as Government members are concerned. A number of agencies which commented to us on this amendment expressed the view that agency members were responsive to the views of their agencies in the last Conference, despite similar language in the Executive order which established the Conference, and that they will continue to be even if the language in question should remain in legislation finally enacted.

Omission of the language would not mean, of course, that agency members could speak or vote only "under instruction," and therefore could not be intelligently responsive to floor debate. Agency officials rely on Federal employees to represent their agencies in a great variety of situations, including testimony before congressional committees. That representation could not be effective if employees were presenting personal views, rather than the views of their agencies. Agency officials designate employees whom they can rely upon to reflect views that are consistent with the needs and policies of their agencies, and they can change their designation if they find that such reliance has been misplaced.

The primary effect of this amendment then would be to dilute even more the official interagency character of the undertaking and to free agency heads from any real responsibility for the success of the Conference. In addition, it would place Federal employees in an awkward and untenable position. If it should be concluded that a Conference of individual experts, acting in their private capacities, would have greater value than one which included agency representatives it would seem preferable that it be created as a private organization through individual initiative and not through law as an official agency of the Federal Government.

There is no evidence that these Senate amendments I have described are needed in order to prevent blind adherence to the status quo. On the contrary, the report of the last Conference states that the Conference proved the agencies "will aggressively attack their own shortcomings." The truth of that statement is evident in the prompt action taken by agencies on the recommendations made by the last Conference.

In preparation for the Senate hearing on S. 1664 in June 1963, Bureau staff prepared a summary and analysis of agency reports to the Bureau expressing their views and indicating the status of action on recommendations contained in the final report of the last Conference, which was transmitted to the President on December 15, 1962. The summary was incomplete because of time limitations, but it dealt with reports of 38 Federal agencies with respect to 21 recommendations. Those 21 recommendations, however, accounted for 583 separate instances in which a recommendation was applicable to an activity carried on by a reporting agency.

In 510 instances where evaluation of a recommendation was completed, 398 or 78 percent of the agency responses expressed complete approval of the recommendation; another 56 or 10 percent expressed approval in principle although some modification was deemed necessary to achieve the objective of the recommendation in the responding agency. Recommendations were disapproved for use in the agency in only 20 instances, approximately 3½ percent of the total on which evaluation was completed.

Reports on the status of action to carry out the recommendations were equally gratifying. Of 331 approved recommendations which the individual agencies had authority to carry out immediately, 75 percent were in effect prior to June 13, 1963, and action was underway or had been definitely scheduled in another 20 percent.

In addition to improvements resulting from recommendations of the last Administrative Conference, the regulatory agencies have improved their operations and reduced delays in a variety of other ways. A few examples are described in a chapter on regulatory administration which appears in a Bureau publication of April 1963, entitled "Cost Reduction Through Better Management in the Federal Government." I will be glad to leave a copy of that publication with the committee, and other copies are available if needed. The examples in that publication along with the prompt action taken on recommendations of the Conference show conclusively, I think, that the agencies are working to improve their own performance and can be relied upon to continue to do so.

The next Senate amendments I would like to discuss relate to section 3 of S. 1664. As explained in the accompanying Senate Report 621, the amendments

to section 3 purport to "make the jurisdiction of the Conference coextensive with that of the Administrative Procedure Act itself." If that language is intended to mean that only those matters which are governed by the Administrative Procedure Act shall be within the scope of the Conference, then it narrows the scope of the Conference from that set out in the original bill. Clearly that is not the intent, since the Senate report also indicates an intent to broaden the jurisdiction of the Conference "to include the study of all problems arising out of the Administrative Procedure Act."

Analysis of the amendments shows that their minimum effect would be to bring within the scope of this Conference, which would be created to improve administrative procedure, a variety of matters which, as a matter of policy, Congress has specifically excluded from coverage of the procedural sections of the Administrative Procedure Act. These are matters having little in common with the regulatory programs of Government. Despite their great diversity, regulatory programs have enough in common to warrant an interagency approach to procedural improvement. In general, these matters of common interest relate to the procedures followed in dealing with matters which affect private rights. Unless a substantial degree of common interest is maintained the interest and participation of the agencies cannot be maintained at a high level. Top Federal officials are simply too busy to spend official time studying questions or attending meetings which have no bearing on their agency responsibilities. We believe the problems of the major regulatory agencies should and inevitably will dominate the Conference. Therefore we would urge that the statutory mandate of the Conference be limited to those areas which represent the broad common concern of the independent regulatory agencies and the executive departments. Unless this is done it will be virtually impossible to create a Conference of workable size which provides appropriate representation for all the affected agencies and private interests.

To overcome these major problems which I have discussed, the Bureau of the Budget urges that this committee approve the original language of S. 1664 and H.R. 7200 as they relate to the scope of the Conference and the composition of the Conference and the Council.

An amendment to section 6(c)(12) of S. 1664 also should be mentioned. That amendment would require that the Chairman's annual reports shall set forth "the compliance of the agencies with the recommendations of the Conference." Use of the word "compliance" tends to connote an agency obligation to follow Conference recommendations. The remainder of the bill, however, makes clear that recommendations are advisory only, and that each agency is expected to act on them in the manner deemed appropriate to the particular public program which the agency administers. I believe there is general agreement that the diversity of Federal programs precludes the establishment of uniform procedure in all cases. The Conference should be free to recommend procedures which it deems desirable in most programs, and agencies should be free to depart from the recommendations whenever departure is in the public interest.

In conclusion, I would like to reaffirm the Bureau's support for legislation which would provide a suitable organization through which Federal agencies, assisted by outside experts, may cooperatively study mutual problems, exchange information, and develop recommendations for consideration by the appropriate Federal authorities. Experience has demonstrated that such a Conference can produce results that are in the public interest.

Mr. SEIDMAN. I think it is addressed mainly to the points at issue.

I would like to first introduce my colleague on my right, Miss Hazel Guffey, a member of my staff in the Bureau of the Budget.

Mr. LIBONATI. We are glad to have you appear.

Mr. SEIDMAN. With your permission, Mr. Chairman, I will proceed with my statement.

Mr. Chairman and members of the committee, I appreciate this opportunity to give you the views of the Bureau of the Budget with respect to the three bills you have under consideration to create a permanent Administrative Conference of the United States.

The language of H.R. 7200 and of S. 1664 as originally introduced in the Senate was drafted in the executive branch to carry out a recom-

mendation of the recent Administrative Conference that a permanent Conference be established by law.

In testimony at the Senate hearing on S. 1664, the Deputy Director of the Bureau of the Budget expressed the Bureau's support for a statutory Conference along the lines of that bill.

Therefore, I believe it would save your time if I limit my general statement today primarily to certain problems raised by the Senate amendments to S. 1664 which we believe warrant earnest consideration by this committee. These amendments are as follows:

1. The word "preponderantly" was dropped from section 4(b) and section 6(b) of S. 1664. Those were complementary provisions which would assure that the Conference and its executive committee, the Council, would be composed preponderantly of Federal officials and personnel. A related amendment to section 4(b)(6) provides for "full," rather than "adequate," representation of the viewpoints and diverse experience of persons from private life in the Conference membership.

2. A new provision in section 6(e) would direct each member of the Conference to "participate in his individual capacity and not as a representative of any governmental or nongovernmental organization."

3. The provisions of section 3 of S. 1664 which would have directed the work of the Conference primarily toward regulatory programs in which Federal agencies perform quasi-legislative or quasi-judicial functions were eliminated or amended. As a result, the Conference would be given a broader scope, exactly how broad apparently being a matter of some uncertainty.

These amendments, taken together, would change the character of the proposed Conference so basically as to cast serious doubt on the desirability of its creation under Federal law.

As introduced, S. 1664 and H.R. 7200 would have established an official agency of the Federal Government.

The bills were designed to carry out the Conference recommendation that a permanent Conference be constituted primarily as an inter-agency body through which the agencies themselves could work to improve their administrative procedure. The proposed membership of the Conference would have been consistent with that intent.

However, to promote objectivity and fresh ideas, the bills also provided for the membership of private persons uniquely qualified to provide expert advice and responsible criticism.

The Senate made no changes in the purpose of the bill as set forth in section 2(e). Nevertheless, the amendments to sections 4(b) and 6(b) would make it possible for the Conference, an official Government body, to be dominated by private parties, who could use the Conference as a sounding board for private interest.

That possibility is reinforced by Senate Report 621, which emphasizes that the President should have discretion in appointing Council members and that the ratio of Government to non-Government personnel in the Conference as a whole should be left to the Chairman and the Council.

It is further reinforced by the Senate amendment which would require "full," rather than "adequate," representation of the viewpoints of private citizens. When these amendments are taken together, it

could reasonably be argued that the intent was to reverse the original concept of a Conference primarily of and for the agencies to enable them to help themselves.

The amendments could subject the Chairman and the Council to unnecessary and time-consuming pressures, since it is the Chairman, with the approval of the Council, who would appoint members of the conference from private life. In addition, the amendments would create practical problems in establishing a Conference of workable size.

I might add, Mr. Chairman, I sat through the morning listening to the other witnesses and I am rather puzzled. It seems to me there is a general consensus that this is to be primarily an agency Conference, of which the primary members and the majority members inevitably would have to be from the agencies involved.

After all, those are the ones who have the responsibility to act.

Mr. LIBONATI. The way you talk, you seem to have been taken in.

Mr. SEIDMAN. No, sir; it seems to me that this is our view.

In fact, if it were anything else, we would have serious objection to enactment of legislation, if it were something other than an agency Conference as the policy statement in the bill itself says.

Mr. LIBONATI. You mean to say the original intent was carried out, and now these amendments have destroyed the bill in that regard, and therefore you recommend it in its present form; it should not be enacted. Is that correct?

Mr. SEIDMAN. That is correct.

Mr. Chairman, if you will bear with me, the statement of the purpose of the bill—this is in section 2(e) which is unamended—is that “Experience has demonstrated that cooperative effort among Federal officials, assisted by private citizens and others whose interest, competence, and objectivity enable them to make a unique contribution, can find solutions to complex problems and achieve substantial progress in improving the effectiveness of administrative procedure.”

The point I wish to make is, I think the purpose of the bill states this, this is to be a Conference primarily of the agencies and for the agencies, with outside participation to bring in some fresh viewpoints from the outside. It is not to be a Conference dominated by private interests. I do not think there is any dispute about this intent.

If this is the intent, I cannot understand the objection to having it so specified in the law.

It seems to me that the Congress should not leave this to the discretion of the President and coming from where I do in the Executive Office of the President, it might be assumed I would always be arguing the maximum Presidential discretion; but I do not think a matter of this kind should be left as a matter of discretion.

If this is the intent, I cannot understand why there then is objection to the law so stating.

It seems to me that the Congress should state what the intent of the law is, if this is what is desired, that this be a Conference preponderantly of agency personnel.

I have no brief for the word “preponderantly.” This is a vague word. There are other means of achieving the purpose such as by providing either a numerical or percentage limitation on the number of outside people who may be appointed to participate in the Conference.

Mr. LIBONATI. Was it ever called to your attention what changes they have been considering?

Mr. SEIDMAN. No, sir. It was not.

Mr. LIBONATI. Well, it seems they are very enthusiastic about contributing improvements to the present operation of the Government units and agencies, to save \$100 million they said and cut down 10 percent at the very inception of their Conference.

If you will recall, the chairman said that he was very surprised that they would be able to do that.

Mr. SEIDMAN. I do not know on what the estimates of savings are based. We do support an Administrative Conference. We do think it can make a constructive contribution to improved administrative procedure. In order to do this, we think it will have to be so organized as to command the confidence and to obtain acceptance by the agencies concerned.

I do not think we can accomplish this by either direction or coercion.

Mr. LIBONATI. Of course, on the other hand, if they have some suggestion, you have a second crack at it with the Congress. No matter what their control is within the Conference itself, they have to come to the Congress for legislation to make these corrections, is that true?

Mr. SEIDMAN. This is entirely correct unless it is something on which the agencies have authority to act.

Mr. LIBONATI. Or they have to go to your agency or some specific agency and recommend to them changes that are solely within their province to suggest only in view of the purposes delegated to them this right to organize and to activate their operation.

Mr. SEIDMAN. This is entirely correct, Mr. Chairman.

Mr. LIBONATI. Right?

Mr. SEIDMAN. But I would submit that we are creating here a permanent agency of the U.S. Government. In fact, I know of no precedent for providing a permanent agency in which you have people participating in private capacities, or which could be dominated by people acting in their private capacities.

Mr. LIBONATI. I think you are very apprehensive because of the enthusiasm with which they talked about these other programs that they would initiate affecting your operation, and especially that one which gives them somewhat of a—I would call it a resolve, in the nature of a resolution, to investigate contracts that have been consummated and then make determinations on the equities involved.

I think that is what you are a little fearful of. It would be like a court of review without having juridical or judicial powers.

Mr. SEIDMAN. I am sure, Mr. Chairman, some of the agencies concerned might have this fear. Of course, the Bureau of the Budget does not have any very significant contracts.

I think we are reasonably neutral. We have the same objective, because, as you know, under the Budget and Accounting Procedures Act, the Budget Bureau has the responsibility for improving management in the executive branch of the Government.

Proponents of a permanent Administrative Conference rely heavily on the Judicial Conference of the United States as a precedent. That Conference, of course, consists entirely of Federal judges.

The Chief Justice himself summons the Conference and is its presiding officer.

There is no question that it is an official body, the instrument through which the judges themselves seek to improve the operation of the courts. The viewpoints of private citizens on particular matters are obtained through special advisory committees or study groups, which make recommendations to the Conference.

The temporary Administrative Conferences, called by President Eisenhower in 1953 and by President Kennedy in 1961, departed from the precedent of the Judicial Conference of the United States by providing for appointment of members from private life.

In both Conferences, however, their official character was recognized through the appointment of a majority of members from the Federal agencies.

The value of outside participation was demonstrated in those Conferences; that should not, however, cause us to forget that improvement of procedure is chiefly dependent on action by the agencies themselves.

We believe that the organization of the Conference as defined in law should underline, rather than dilute, the official responsibility of the agencies for assuring that desirable improvements are identified and made by them when possible or recommended to Congress if legislation is necessary.

I might again comment here—it is not in my prepared statement—on the suggestion made by Mr. Russell on behalf of the American Bar Association in which he referred to the possibility that the Conference might be used as a “wailing wall” to which people could come with complaints from the outside.

This suggestion rather concerns me. If the Conference should become a focal point for people with complaints about the agencies it would be highly destructive to the purposes we are seeking.

This proposal was discussed in the Conference; I was a member of the Administrative Conference of the United States in which it was suggested the permanent Conference should act as an “ombudsman,” a Scandinavian term. The “ombudsman” evidently has authority to receive and act on complaints. When a private citizen has a complaint against one of the administrative agencies, he can bring it to the “ombudsman,” who will conduct an investigation.

This suggestion was not accepted by the Conference, and at least in my expectation, I do not anticipate that the Conference will become a “wailing wall” or that the Chairman of the Conference—and we do support having a strong Chairman—would be in a position to exercise direction over any of the regulatory agencies.

In addition to the amendments affecting its composition, the official character of the proposed Conference is further weakened by the amendment in section 6(e) which provides that each member of the Conference shall act in his individual capacity and not as a representative of any governmental or nongovernmental organization.

This is an unrealistic provision insofar as Government members are concerned. A number of agencies which commented to us on this amendment expressed the view that agency members were responsive to the views of their agencies in the last Conference, despite similar language in the Executive order which established the Conference, and that they will continue to be even if the language in question should remain in legislation finally enacted.

Omission of the language would not mean, of course, that agency members could speak or vote only "under instruction," and therefore could not be intelligently responsive to floor debate.

Agency officials rely on Federal employees to represent their agencies in a great variety of situations, including testimony before congressional committees.

That representation could not be effective if employees were presenting personal views, rather than the views of their agencies. Agency officials designate employees whom they can rely upon to reflect views that are consistent with the needs and policies of their agencies, and they can change their designation if they find that such reliance has been misplaced.

The primary effect of this amendment then would be to dilute even more the official interagency character of the undertaking and to free agency heads from any real responsibility for the success of the Conference.

In addition, it would place Federal employees in an awkward and untenable position. If it should be concluded that a Conference of individual experts, acting in their private capacities, would have greater value than one which included agency representatives it would seem preferable that it be created as a private organization through individual initiative and not through law as an official agency of the Federal Government.

There is no evidence that these Senate amendments I have described are needed in order to prevent blind adherence to the status quo. On the contrary, the report of the last Conference states that the Conference proved the agencies "will aggressively attack their own shortcomings."

The truth of that statement is evident in the prompt action taken by agencies on the recommendations made by the last Conference.

In preparation for the Senate hearing on S. 1664 in June 1963, Bureau staff prepared a summary and analysis of agency reports to the Bureau expressing their views and indicating the status of action on recommendations contained in the final report of the last Conference, which was transmitted to the President on December 15, 1962.

The summary was incomplete because of time limitations, but it dealt with reports of 38 Federal agencies with respect to 21 recommendations. Those 21 recommendations, however, accounted for 583 separate instances in which a recommendation was applicable to an activity carried on by a reporting agency.

In 510 instances where evaluation of a recommendation was completed, 398, or 78 percent of the agency responses expressed complete approval of the recommendation; another 56, or 10 percent, expressed approval in principal although some modification was deemed necessary to achieve the objective of the recommendation in the responding agency. Recommendations were disapproved for use in the agency in only 20 instances, approximately 3½ percent of the total on which evaluation was completed.

Reports on the status of action to carry out the recommendations were equally gratifying. Of 331 approved recommendations which the individual agencies had authority to carry out immediately, 75 percent were in effect prior to June 13, 1963, and action was underway or had been definitely scheduled in another 20 percent.

In addition to the improvements resulting from recommendations of the last Administrative Conference, the regulatory agencies have improved their operations and reduced delays in a variety of other ways.

A few examples are described in a chapter on "Regulatory Administration" which appears in a Bureau publication of April 1963, entitled "Cost Reduction Through Better Management in the Federal Government."

Mr. Chairman, if you would like, I can leave a couple of copies of this report for the committee files. You will find pages 54 through 59 of this publication indicate some of the actions which the regulatory agencies have taken on their own initiative to improve efficiency.

Mr. LIBONATI. It may be received.

(The document referred to is in the files of the subcommittee.)

Mr. SEIDMAN. I will be glad to leave a copy of that publication with the committee, and other copies are available if needed. The examples in that publication along with the prompt action taken on recommendations of the Conference show conclusively, I think, that the agencies are working to improve their own performance and can be relied upon to continue to do so.

The next Senate amendments I would like to discuss relate to section 3 of S. 1664. As explained in the accompanying Senate Report No. 621, the amendments to section 3 purport to "make the jurisdiction of the Conference coextensive with that of the Administrative Procedure Act itself."

If that language is intended to mean that only those matters which are governed by the Administrative Procedure Act shall be within the scope of the Conference, then it narrows the scope of the Conference from that set out in the original bill. Clearly that is not the intent, since the Senate report also indicates an intent to broaden the jurisdiction of the Conference "to include the study of all problems arising out of the Administrative Procedure Act."

Analysis of the amendments shows that their minimum effort would be to bring within the scope of this Conference, which would be created to improve administrative procedure, a variety of matters which, as a matter of policy, Congress has specifically excluded from coverage of the procedural sections of the Administrative Procedure Act.

These are matters having little in common with the regulatory programs of Government. Despite their great diversity, regulatory programs have enough in common to warrant an interagency approach to procedural improvement.

In general, these matters of common interest relate to the procedures followed in dealing with matters which affect private rights.

Unless a substantial degree of common interest is maintained, the interest and participation of the agencies cannot be maintained at a high level.

Top Federal officials are simply too busy to spend official time studying questions or attending meetings which have no bearing on their agency responsibilities.

This has been the curse of many interagency committees, where people do not participate after a while because 90 percent of what is discussed in the committee has no bearing on their agency.

We believe the problems of the major regulatory agencies should and inevitably will dominate the Conference. Therefore we would

urge that the statutory mandate of the Conference be limited to those areas which represent the broad common concern of the independent regulatory agencies and the executive departments. Unless this is done it will be virtually impossible to create a Conference of workable size which provides appropriate representation for all the affected agencies and private interests.

To overcome these major problems which I have discussed, the Bureau of the Budget urges that this committee approve the original language of S. 1664 and H.R. 7200 as they relate to the scope of the Conference and the composition of the Conference and the Council.

An amendment to section 6(c) (12) of S. 1664 also should be mentioned. That amendment would require that the Chairman's annual reports shall set forth "the compliance of the agencies with the recommendations of the Conference." Use of the word "compliance" tends to connote an agency obligation to follow Conference recommendations.

The remainder of the bill, however, makes clear that recommendations are advisory only, and that each agency is expected to act on them in the manner deemed appropriate to the particular public program which the agency administers. I believe there is general agreement that the diversity of Federal programs precludes the establishment of uniform procedure in all cases.

The Conference should be free to recommend procedures which it deems desirable in most programs, and agencies should be free to depart from the recommendations whenever departure is in the public interest.

In conclusion, I would like to reaffirm the Bureau's support for legislation which would provide a suitable organization through which Federal agencies, assisted by outside experts, may cooperatively study mutual problems, exchange information, and develop recommendations for consideration by the appropriate Federal authorities.

Experience has demonstrated that such a Conference can produce results that are in the public interest.

I think that is our primary concern, Mr. Chairman, that this Conference be constituted in such a way that it will produce results and will not be merely a research organization or debating society, though private organizations of that type serve a very useful purpose. We are interested in a conference that will produce constructive results.

I might add also we did ask the agencies for their views on the Senate amendments and not all of them, of course, had any concern with the amendments, because they did not affect their operation. But a majority of those agencies which would be affected by the Senate amendments indicated views along the general line of those I have expressed this afternoon.

Mr. LIBONATI. I notice you used the term "assisted by outside experts."

Mr. SEIDMAN. That is correct.

Mr. LIBONATI. In other words, you do not want domination or guidance, or control?

Mr. SEIDMAN. That is correct.

There is an old saying, Mr. Chairman, that experts should be on tap and not on top.

Mr. LIBONATI. Well, you know the old saying: If you lead the trunk into the tent, the elephant comes in?

But really, I do not see where you are very far apart if the bill is again, may I use the word, definitive, and in conformity with what the sponsors of the bill seek to accomplish. Because in here you state that Federal officials are too busy, due to the responsibility of their work, to go over, give time for all of these questions, and certainly they do not have time to answer complaints. But it is just a question of the delineation between the powers of the agency in accordance with the act which brings it into being to control your own affairs as far as activating their operations.

Mr. SEIDMAN. That is correct.

Mr. LIBONATI. Now, did you testify before the Senate committee?

Mr. SEIDMAN. Yes, we did. And the bill, as introduced in S. 1664, was drafted in the Bureau of the Budget after rather lengthy consultations with the representatives of the Administrative Conference and the American Bar Association.

I agree, Mr. Chairman, I do not think we are far apart, but I think the differences are of considerable significance.

As I said, the first one, on the intent, that it should be an agency conference, there seems to be consensus on that but there seems to be a lack of consensus as to whether the law should so state.

As I say, I am rather baffled; if everybody is in agreement, it seems to me the Congress should so provide and not leave it as a matter of discretion.

I think the second one, this is an honest difference concerning whether people should appear in their individual capacities or their official capacities. There is some misunderstanding about the way the executive branch operates.

Now, S. 1664, as drafted by the Bureau, was silent on this. We did not say that they had to appear in an official or representative capacity. We left this to the discretion of the agencies concerned.

Mr. LIBONATI. Well, you do not disagree that the bill should be so informant, do you? After all, they have to be given a status.

Mr. SEIDMAN. We strongly object to the bill providing that a member designated by an agency head must serve in a private capacity. This I think is a contradiction. We see no need for such a provision in that this should be a matter between the member and his superior.

Now, I appear many times, as I am appearing here today; the Director of the Bureau of the Budget gives me general policy instructions. I do not have to go back to him in order to respond to questions which the chairman raises with me. We have many bodies in the Government where people appear in their official capacity but it does not mean they are necessarily instructed and have to go back for instructions on every single item that comes up in the group.

I have, for example, attached to my Office an Advisory Council of Agencies on Automatic Data Processing Equipment. The members of this Council are representatives of their agencies in an official capacity; we talk about the very things this Conference does, improvement in procedure, improvement in carrying on work. They appear as experts and their instructions can be extremely broad as to what they can do.

But they are there as officials and they are not there as private individuals. It seems to me this is a contradiction in terms here. I think sincerely it comes out of some misunderstanding as to how in-

ternal business within the executive branch of the Government is conducted.

Mr. LIBONATI. You are not against giving them authoritative capacity to spend Federal moneys for these purposes?

Mr. SEIDMAN. No. Mr. Chairman, my only point is that as far as the members of a Conference of the agencies are concerned, they should be there in an official capacity and not in an individual capacity.

This does not mean in an instructed capacity, it does not mean that they cannot fully participate; but they are there as public officials and not as private citizens.

Now, as far as the private members are concerned, I think it is important that they not be selected to represent outside groups because they are there as technical experts and not as representatives of groups in the community.

It seems to me that some of this is just a misunderstanding rather than really a deep-seated difference of view.

Mr. LIBONATI. Well, I really do not believe the classification is necessary. I mean, to classify those who work for the agencies as representing themselves as individuals. I do not think it means anything.

Mr. SEIDMAN. That is correct, as I said, we do not think any language is necessary.

Mr. LIBONATI. I think the most important contributions are by individuals who are specialists in private life, in the universities, and so forth, and economists, and so forth, who are authorities in their subject, to fit into these determinations and give a highly skilled opinion, basically informed, because of their training.

Mr. SEIDMAN. That is correct.

Mr. LIBONATI. I think they are the most important. They are going to advise the changes, if any are going to improve the procedures, I mean, and argue for it, and propound their theories to the point where they can be practically put into action by the agencies.

Mr. SEIDMAN. We hope they will be able to be persuasive in presenting it. But in the final analysis, they will have to be able to persuade.

Mr. LIBONATI. Comes from new thought, new ideas, and new application of old ideas.

I do not think that is really a hurdle that could not be ameliorated in some way.

Mr. SEIDMAN. Well, we would propose that the language be deleted from the bill because we see no need to state in the bill that people will appear in individual capacities. We did not say in our version of this bill either that they would be in individual capacities or not.

Mr. LIBONATI. You admit that the purposes are needed and could supply a much—let us say could supply a program to the agencies for some improvement, let us put it that way?

Mr. SEIDMAN. We feel an organization of this type can make a very significant contribution.

Mr. LIBONATI. Thank you very much.

Any questions, gentlemen—the gentleman from Wisconsin?

Mr. KASTENMEIER. Yes, just one or two questions.

Is H.R. 7200 today absolutely acceptable to the Bureau of the Budget? That is to say, if you had your choice today, are there any amendments you would make to H.R. 7200?

Mr. SEIDMAN. There are no substantive amendments. There were some other amendments to S. 1664 which I did not raise here, I do not think they are of major importance. And some may be improvements. We provided that all of the chairmen of the various major regulatory agencies would be members of the Conference, *ex officio*. I think that was amended in the Senate bill to permit the Chairman to designate someone else rather than requiring that the Chairman serve *ex officio*.

We certainly have no objection to that. It may well be an improvement. So, other than that, the ones of substance, as far as we are concerned, are the ones I mentioned in my prepared statement.

Mr. KASTENMEIER. Were S. 1664 and H.R. 7200 identical?

Mr. SEIDMAN. Yes.

Mr. KASTENMEIER. Precisely the same?

Mr. SEIDMAN. Yes.

Mr. KASTENMEIER. You heard earlier today comments on designation of numbers to comprise the Conference, not the Council. There is no number set forth in the bill. Representing the Bureau of the Budget, would you not like to see such more precisely identified in terms of numbers?

Would this not in fact—at least in part, as Mr. Libonati suggested—be a safeguard, if you had an acceptable number beyond which, say, the Conference would not go? Would not this be desirable?

Mr. SEIDMAN. I think it might well be, as I said earlier, if there were some number—and I am not really able to suggest exactly what it should be, a percentage perhaps, on number of outside people, to clarify this difficulty on “preponderantly.”

As far as participation by Federal agencies, the difficulty is this: we would want any Federal agency which really had a significant interest in the work of the Conference to be able to participate. We do not want them all; some of them will have rather minor interests and that is why this language is written the way it is.

We have already had indication that almost any agency which even has a minor concern in matters coming before the Conference would want membership, so this would be difficult. We have new programs, laws change, and we would not want arbitrarily to exclude them.

I think the problem is really the number of members from outside the Government.

Mr. KASTENMEIER. As you would see it, then, the Director and Council would construe the Conference to be a very fluid thing, and would admit new members and perhaps ask for resignation of old members of certain agencies, depending on whether at a given time their agency or commission had special problems which would dictate their participation in this Conference; is that right?

Mr. SEIDMAN. That is correct, Mr. Kastenmeier. If you put a numerical limitation on the Conference as a whole and do not discriminate between the outside membership and the Federal agencies. Because then—for example, we had a new agency created recently, like the NASA; it is quite conceivable that their functions might be such that you would want to include them in the Conference.

On the one hand, you would not want to necessarily have to force out another agency in order to permit the NASA to become a member.

Mr. KASTENMEIER. But the Council you have provided for has 2- or 3-year terms?

Mr. SEIDMAN. That is right.

Mr. KASTENMEIER. Could you not have this for the Conference so that you would have a turnover?

Mr. SEIDMAN. I think we do have 2-year terms for the members of the Conference appointed from private life.

Mr. KASTENMEIER. Then you would have a turnover in any event, a situation which would allow you not to reappoint a member?

Mr. SEIDMAN. That is correct. The concept is that the Conference as an agency conference certainly ought to include representatives of those agencies with major concern with the subject matter under consideration, not just those with minor peripheral concern.

Mr. KASTENMEIER. One other question, that relating to cost. I would like to learn any expert advice on how much this would cost.

Being a member of the Budget Bureau I would think if there would be anybody expert on that, you would be.

Mr. SEIDMAN. The estimate you heard earlier is one that Mr. Staats, our Deputy Director, gave to the Senate committee; we have not precisely priced it out, but the estimated cost would be from about a quarter of a million dollars to half a million dollars.

Mr. LIBONATI. Well, we will leave the record open for 60, 80, 100, and 150, if you submit the schedule table on that.

With you, please?

Mr. SEIDMAN. We will endeavor to develop cost data, if you would like, Mr. Chairman. The estimates will depend on the number of members you wish. We could do it on varying numbers; we could do ranges of 60, 80, 90-plus.

Mr. LIBONATI. We discussed 60, 80, and I think 100.

Mr. KASTENMEIER. You mean in the Senate?

Mr. LIBONATI. In the Senate. On limitation of members; is that right?

Mr. SEIDMAN. I do not recall precisely. Judge Prettyman might remember.

Mr. LIBONATI. I think Congressman Harris made some comment. We will do that. You work that out, 60, 80, 100, 120, 150.

Mr. SEIDMAN. We will be glad to.

(Subsequently the Bureau of the Budget submitted the following:)

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET.,
Washington, D.C., March 17, 1964.

Hon. EDWIN E. WILLIS,
Chairman, Subcommittee No. 3, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR MR. WILLIS: I am sorry that an earlier commitment to testify before another congressional committee made it impossible for me to appear personally at your recent hearing on pending bills to create a permanent Administrative Conference of the United States. I was glad to learn from Mr. Harold Seidman, who testified for the Bureau of the Budget, that you and the other members of the committee are making a thorough exploration of the important issues involved in these proposals.

During Mr. Seidman's testimony the acting chairman, Congressman Libonati, asked the Bureau of the Budget to furnish estimates of the annual cost of a permanent Conference of 60, 80, or 100 members. A statement for the record is enclosed.

Considering the experience of the last Conference and the additional cost involved for the salary of a permanent Chairman, we estimate that expenditures would run around \$250,000 per annum. The actual cost would depend, of course, on the number and scope of studies undertaken, and these would be shaped

largely by the views of the Chairman and the Council. Most of the expenditures would be for the Chairman, his staff, and other administrative expenses, such as printing. These costs would not be significantly affected by the number of Conference members. Since the Conference members would receive no compensation, the estimates for Conferences of different sizes would vary only with respect to travel and per diem costs for nonagency members living outside the Washington area. In the last Conference, which had 88 members, only 26 out of 38 nonagency members lived outside the Washington area. Assuming a similar proportion of nonresident members in a Conference in which nonagency members were about 40 percent of the total membership, we estimate that annual travel and per diem costs would range from approximately \$8,500 for a Conference of 60 members to around \$14,000 for a Conference of 100 members based on an average annual rate of \$500 per member.

Mr. Fuchs also requested that the Bureau draft language which would carry out the suggestion of some committee members that limits be set on the total membership of the Conference and the number of nonagency members. Such a draft is enclosed. The draft also suggests language to assure that agency representatives would constitute a majority of the membership of the Council, which would be the executive committee of the Conference.

I would like to urge the inclusion of language along the lines suggested in the enclosed draft if your committee should decide to act favorably on either H.R. 7200 or S. 1664, as amended by the Senate.

The Bureau agrees with the Senate criticism that the language of H.R. 7200 and the original S. 1664 is "vague." However, the Senate amendments together with the language of the Senate report would leave the congressional intent uncertain and make it possible for an official Federal agency to be dominated by private parties. The Bureau of the Budget has grave doubts about the wisdom of enacting any legislation unless that possibility is removed and the congressional intent is made clear.

After careful consideration of the number of agency members needed to provide adequate agency representation the Bureau of the Budget believes that a Conference of 75 members, including no more than 25 members appointed by the Chairman, would best achieve the objectives of the Conference and leave some flexibility to meet changing circumstances. Since the Chairman and 4 Council members appointed by the President could be from outside the agencies, the total number of nonagency members would be no more than 30, or 40 percent, as suggested in the Senate report.

If the Bureau of the Budget can provide any further assistance to the committee in its consideration of these bills, I hope you will call upon us.

Sincerely,

ELMER B. STAATS, *Deputy Director.*

ESTIMATED ANNUAL COST OF A PERMANENT ADMINISTRATIVE CONFERENCE OF THE UNITED STATES COMPOSED OF 60, 80, OR 100 MEMBERS

Most of the expenditures for an Administrative Conference of the United States would be for the salaries of the Chairman and his staff and for other administrative expenses, such as printing. These costs would not be significantly affected by the number of Conference members. Therefore the cost of Conferences of different sizes would vary only with respect to the travel and per diem costs for members who live outside the Washington metropolitan area.

The following cost estimates are based on the experience of the last Conference and the provision for a full-time Chairman in the pending bills:

1. Estimated annual cost of the Conference-----	\$250, 000
2. Estimated travel and per diem costs for nonresident members: ¹	
(a) Conference of 60 members, including 17 nonresident members	8, 500
(b) Conference of 80 members, including 22 nonresident members	11, 000
(c) Conference of 100 members, including 28 nonresident members-----	14, 000

¹ Assumes that 40 percent of the members would be from outside the agencies, of whom 70 percent would live outside the Washington metropolitan area. Estimated annual cost per nonresident member is \$500.

[Draft, Mar. 12, 1964]

DRAFT LANGUAGE TO LIMIT THE SIZE OF THE ADMINISTRATIVE CONFERENCE AND THE NUMBER OF MEMBERS OF THE CONFERENCE AND THE COUNCIL WHO MAY BE APPOINTED FROM PRIVATE LIFE

The following amendments to S. 1664, as amended by the Senate, would limit the membership of the Administrative Conference to not more than 75 members. The Chairman and 10 other members of the Council would be appointed by the President, and not more than 25 members (or one-third of the total membership, whichever is the lesser) would be appointed by the Chairman with the approval of the Council. At least six of the Council members appointed by the President would be officials or personnel of Federal regulatory agencies or executive departments.

Section 4(a) : Delete the period at the end of this section and add the following: " , which shall consist of not more than fifteen members appointed as set forth in subsection (b) of this section."

Section 4(b) (6) : Delete all of item (6) and substitute the following: "(6) no more than twenty-five other members appointed by the Chairman, with the approval of the Council, for terms of two years: *Provided*, That the number of members appointed by the Chairman shall at no time exceed one-third of the total number of members. Such members shall be selected in a manner which will provide broad representation of the viewpoints of private citizens and utilize diverse experience, and shall be members of the practicing bar, scholars in the field of administrative law or government, or others specially informed by knowledge and experience with respect to Federal administrative procedure."

Section 6(b) : Delete the first sentence of this section and substitute the following:

"(b) The Conference shall include a Council composed of the Chairman of the Conference, who shall be the Chairman of the Council, and ten other members appointed by the President, of whom at least six shall be officials or personnel of Federal regulatory agencies or executive departments. Members other than the Chairman shall be appointed for three-year terms, except that the Council members initially appointed shall serve for one, two, or three years, as designated by the President: *Provided*, That (1) the service of any member shall terminate whenever a change in his employment status would make him ineligible for Council membership under the conditions of his original appointment, and (2) except as provided in item (1), above, any member whose term has expired may continue to serve until a successor is appointed."

Under the language, as drafted above, no more than 30 members or 40 percent of the total membership of 75 persons could be appointed from outside the participating agencies, including the Chairman and four other Council members appointed by the President. Within a range of 60 to 100 total members the size of the Conference may be changed without significantly altering its composition merely by substituting the desired total membership in section 4(a) and entering one-third of that total in section 4(b) (6) as the number to be appointed by the Chairman. For example, if the total membership is 60 and the Chairman appoints 20, no more than 25 members or 41.5 percent could be from outside the participating agencies. If the total membership is 100 and the Chairman appoints 33, not more than 38 members, 38 percent, could be from outside the agencies.

Mr. LIBONATI. On projected cost.

Mr. KASTENMEIER. Thank you, Mr. Chairman.

Mr. LIBONATI. Any further questions?

We will leave the record open for any filing of any matters that you may feel are important after hearing the discussion back and forth of any of the witnesses or persons present, subject to the Chair's determination, when he closes the record.

But we will say for about 3 days anyway, the record will remain open at the behest of the chairman, Mr. Willis.

I declare the hearing adjourned.

(Whereupon, at 4 p.m. the hearing in the above-entitled matter was adjourned.)

LEGISLATIVE HISTORY

Public Law 88-499
S. 1664

TABLE OF CONTENTS

Index and summary of S. 16641
Digest of Public Law 88-499.2

INDEX AND SUMMARY OF S. 1664

June	4, 1963	Sen. Long (Mo.) introduced and discussed S. 1664 which was referred to the Senate Judiciary Committee. Print of bill and remarks of author.
June	24, 1963	Rep. Harris introduced and discussed H. R. 7200 and H. R. 7201 which were referred to the House Judiciary Committee. Print of bill and remarks.
Oct.	29, 1963	Senate committee reported S. 1664 with amendments. S. Report No. 621. Print of bill and report.
Oct.	30, 1963	Senate passed S. 1664 as reported.
Oct.	31, 1963	S. 1664 was referred to the House Judiciary Committee. Print of bill as referred.
May	28, 1964	House subcommittee voted to report S. 1664.
July	21, 1964	House committee voted to report S. 1664.
July	23, 1964	House committee reported S. 1664 with amendments. H. Report No. 1565. Print of bill and report.
Aug.	6, 1964	Rules Committee cleared rule for consideration of S. 1664.
Aug.	7, 1964	Rules Committee reported resolution for the consideration of S. 1664. H. Res. 824, H. Rept. No. 1719. Print of resolution and report.
Aug.	12, 1964	House passed S. 1664 as reported.
Aug.	17, 1964	Senate concurred in House amendment to S. 1664.
Aug.	30, 1964	Approved: Public Law 88-499.

Hearing: H. Committee on S. 1664, H.R. 7200, and
H. R. 7201 - March 5, 1964.

DIGEST OF PUBLIC LAW 88-499

ADMINISTRATIVE CONFERENCE ACT.

Provides for the establishment of a permanent Administrative Conference through which Federal agencies, assisted by outside experts, may cooperatively study mutual problems, exchange information, and develop recommendations for action by proper authorities to the end that private rights may be fully protected and regulatory activities and other Federal responsibilities may be carried out expeditiously in the public interest. Provides that the Administrative Conference shall consist of not more than 91 nor fewer than 75 members, including representatives of the various Federal agencies, members of the practicing bar, scholars in the field of administrative law or government, or others especially informed by knowledge and experience with respect to Federal administrative procedures.

1. 1000

2. 1000

3

88TH CONGRESS
1ST SESSION

S. 1664

IN THE SENATE OF THE UNITED STATES

JUNE 4, 1963

Mr. LONG of Missouri introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide for continuous improvement of the administrative procedure of Federal agencies by creating an Administrative Conference of the United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Administrative Confer-
4 ence Act".

5 FINDINGS AND DECLARATION OF POLICY

6 SEC. 2. The Congress finds and declares that—

7 (a) administration of regulatory and other statutes
8 enacted by Congress in the public interest substantially
9 affects large numbers of private individuals and many
10 areas of business and economic activity;

1 (b) the protection of public and private interests
2 requires continuing attention to the administrative proce-
3 dure of Federal agencies to insure maximum efficiency
4 and fairness in achieving statutory objectives;

5 (c) the diversity of Federal activities frequently
6 precludes the establishment by statute of administrative
7 procedure which would be generally suitable for use by
8 all agencies;

9 (d) responsibility for assuring fair and efficient
10 administrative procedure is inherent in the general
11 responsibilities of officials appointed to administer Fed-
12 eral statutes;

13 (e) experience has demonstrated that cooperative
14 effort among Federal officials, assisted by private citizens
15 and others whose interest, competence, and objectivity
16 enable them to make a unique contribution, can find solu-
17 tions to complex problems and achieve substantial prog-
18 ress in improving the effectiveness of administrative pro-
19 cedure; and

20 (f) it is the purpose of this Act to provide suitable
21 arrangements through which Federal agencies, assisted
22 by outside experts, may cooperatively study mutual prob-
23 lems, exchange information, and develop recommenda-
24 tions for action by proper authorities to the end that
25 private rights may be fully protected and regulatory ac-

tivities and other Federal responsibilities may be carried out expeditiously in the public interest.

DEFINITIONS

SEC. 3. As used in this Act—

(a) “Administrative program” includes any Federal function which involves protection of the public interest and the determination of rights, privileges, and obligations of private persons through “rulemaking” or “adjudication” as those terms are defined in section 2 of the Administrative Procedure Act (5 U.S.C. 1001), except that it shall not include—

(1) any function or matter specified in section 4 (1) or (2) of the Act except to the extent that such function or matter consists of proceedings and decisionmaking required to be conducted in conformity with sections 7 and 8 of the Act or the imposition of penalties on private persons through agency action not subject to sections 7 and 8; or

(2) any matter specified in section 5 (1), (3), (5), and (6) of the Act.

(b) “Administrative agency” includes all executive departments and any other Federal agency, including a constituent agency of an executive department, which carries out an administrative program.

(c) “Administrative procedure” means procedure used

1 in carrying out an administrative program and shall be
2 broadly construed to include any aspect of agency organiza-
3 tion, procedure, or management which may affect the equi-
4 table consideration of public and private interests, the fairness
5 of agency decisions, the speed of agency action, and the
6 relationship of operating methods to later judicial review,
7 but shall not be construed to include the scope of agency
8 responsibility as established by law or matters of substantive
9 policy committed by law to agency discretion.

10 ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

11 SEC. 4. (a) There is hereby established the Admin-
12 istrative Conference of the United States (hereinafter re-
13 ferred to as the "Conference").

14 (b) The Conference shall be composed preponderantly
15 of Federal officials and personnel, including—

16 (1) a full-time Chairman, who shall be appointed
17 for a five-year term by the President, by and with the
18 advice and consent of the Senate. The Chairman shall
19 receive compensation at the highest rate established by
20 law for the chairman of an independent regulatory
21 board or commission, and may continue to serve until
22 his successor has been appointed and has qualified;

23 (2) the chairman of each independent regulatory
24 board or commission;

25 (3) the head of each executive department or other

1 administrative agency which is designated by the
2 President;

3 (4) when authorized by the Council, an appointee
4 from any such board, commission, department, or
5 agency, designated by the department or agency head
6 or, in the case of a board or commission, by the Chair-
7 man with the approval of the board or commission;

8 (5) persons appointed by the President to mem-
9 bership upon the Council hereinafter established who are
10 not otherwise members of the Conference; and

11 (6) other members in such number as will assure
12 adequate representation of the viewpoints of private citi-
13 zens and the utilization of diverse experience, who shall
14 be appointed by the Chairman, with the approval of the
15 Council, for terms of two years. Members appointed
16 by the Chairman shall be members of the practicing
17 bar, scholars in the field of administrative law or govern-
18 ment, or others specially informed by knowledge and
19 experience with respect to Federal administrative
20 procedure.

21 (c) Each member under paragraphs (b) (2) and
22 (b) (3), above, may designate an alternate member to repre-
23 sent him, as occasion requires, in plenary sessions or other
24 activities of the Conference. The alternate member shall

1 have all the obligations and privileges of full membership
2 in the Conference on such occasions.

3 (d) Members of the Conference other than the Chair-
4 man shall receive no compensation for service, but members
5 appointed from outside the Federal Government shall be
6 allowed travel expenses, including per diem in lieu of sub-
7 sistence, as authorized by law (5 U.S.C. 73b-2) for per-
8 sons serving without compensation.

9 DUTIES AND POWERS OF THE CONFERENCE

10 SEC. 5. To carry out the purposes of this Act the Con-
11 ference is authorized to—

12 (a) study the efficiency, adequacy, and fairness of
13 the administrative procedure used by administrative
14 agencies in carrying out administrative programs;

15 (b) make recommendations to administrative
16 agencies, collectively or individually, and to the Presi-
17 dent, the Congress, or the Judicial Conference of the
18 United States, as it deems appropriate;

19 (c) arrange for interchange among administrative
20 agencies of information potentially useful in improving
21 administrative procedure; and

22 (d) collect from administrative agencies and pub-
23 lish such reports of operating statistics as it deems useful
24 for evaluating and improving administrative procedure.

ORGANIZATION OF THE CONFERENCE

SEC. 6. (a) The membership of the Conference meeting in plenary session shall constitute the Assembly of the Conference. The Assembly shall have ultimate authority over all activities of the Conference. Specifically, it shall have power to (1) adopt such recommendations as it deems appropriate for improving administrative procedure: *Provided*, That any member or members who disagree with a recommendation adopted by the Assembly shall be accorded the privilege of entering dissenting opinions and alternative proposals in the record of Conference proceedings, and the opinions and proposals so entered shall accompany the Conference recommendation in any publication or distribution thereof; and (2) adopt bylaws and regulations not inconsistent with this Act for carrying out the functions of the Conference, including the creation of such committees as it deems necessary for the conduct of studies and the development of recommendations for consideration by the Assembly.

(b) The Conference shall include a Council composed preponderantly of Federal officials and personnel. The Council shall consist of the Chairman of the Conference, who shall be the Chairman of the Council, and ten other members appointed by the President for three-year terms, except that the Council members initially appointed shall

1 serve for one, two, or three years, as designated by the
2 President, and each member may continue to serve until a
3 successor is appointed. The Council shall have power to
4 (1) determine the time and place of plenary sessions of
5 the Conference and the agenda for such meetings; (2) pro-
6 pose bylaws and regulations, including rules of procedure
7 and committee organization, for adoption by the Assembly;
8 (3) make recommendations to the Conference or its com-
9 mittees upon any subject germane to the purposes of the
10 Conference; (4) receive and consider reports and recom-
11 mendations of committees of the Conference and transmit
12 them to members of the Conference with the views and
13 recommendations of the Council; (5) designate a member
14 of the Council to preside at meetings of the Council in the
15 absence or incapacity of the Chairman and Vice Chairman;
16 (6) designate such additional officers of the Conference as
17 it may deem desirable; (7) approve or revise the Chair-
18 man's budgetary proposals; and (8) exercise such other
19 powers as may be delegated to it by the Assembly.

20 (c) The Chairman shall be the chief executive of the
21 Conference. In that capacity he shall have power to (1)
22 make preliminary inquiries into matters he deems important
23 for Conference consideration, including matters proposed by
24 persons inside or outside the Federal Government; (2) be
25 the official spokesman for the Conference in relations with

1 the several branches and agencies of the Federal Government
2 and with interested organizations and individuals outside the
3 Government, including responsibility for encouraging Fed-
4 eral agencies to effectuate the recommendations of the Con-
5 ference; (3) request agency heads to provide information
6 needed by the Conference, which information shall be
7 supplied to the extent permitted by law or agency regula-
8 tions; (4) recommend to the Council appropriate subjects
9 for action by the Conference; (5) appoint, with the approval
10 of the Council, members of committees authorized by the
11 bylaws and regulations of the Conference; (6) prepare, for
12 approval of the Council, estimates of the budgetary require-
13 ments of the Conference; (7) appoint employees, subject
14 to the civil service and classification laws, define their duties
15 and responsibilities, and direct and supervise their activities;
16 (8) rent office space in the District of Columbia; (9) pro-
17 vide necessary services for the Assembly, the Council, and
18 the committees of the Conference; (10) organize and direct
19 studies ordered by the Assembly or the Council, utilizing
20 from time to time, as appropriate, experts and consultants,
21 who may be employed as authorized by section 15 of the
22 Administrative Expenses Act of 1946, as amended (5
23 U.S.C. 55a), but at rates for individuals not to exceed \$100
24 per diem; (11) upon request of the head of any agency,
25 furnish assistance and advice on matters of administrative

1 procedure; and (12) exercise such additional authority as
2 may be delegated to him by the Council or the Assembly.
3 The Chairman shall preside at meetings of the Council and
4 at each plenary session of the Conference, to which he shall
5 make a full report concerning the affairs of the Conference
6 since the last preceding plenary session. The Chairman
7 shall, on behalf of the Conference, transmit to the President
8 and the Congress an annual report and such interim reports
9 as he deems desirable.

10 (d) The President may designate a member of the
11 Council as Vice Chairman, who shall serve as Chairman
12 in the event of a vacancy in that office or in the absence or
13 incapacity of the Chairman.

14 APPROPRIATIONS

15 SEC. 7. There are hereby authorized to be appropriated
16 such sums as may be necessary to accomplish the purposes
17 of this Act.

A BILL

To provide for continuous improvement of the administrative procedure of Federal agencies by creating an Administrative Conference of the United States, and for other purposes.

By Mr. Long of Missouri

JUNE 4, 1963

Read twice and referred to the Committee on the
Judiciary

I do not believe anyone can fail to appreciate that something must be done in this area. The matter was very carefully considered by the Administrative Conference and by the staff of the subcommittee in the past few years; and there is general agreement on the concept that much greater emphasis must be given to the decision of the presiding officer. The proposed bill follows the recommendation of the Administrative Conference that his decision shall be subject only to specific exceptions showing where it is in error. Thus, in one stroke there would be wiped out two time-consuming aspects of present procedure. First of all we would have eliminated the idea that there must be two decisions—an initial decision and a "final" decision; and second, we would have limited the need for agency review of the decision to specific exceptions rather than to all of the issues which have already been heard and determined by the presiding officer.

The bill takes another important step in the area of agency review by providing that the agencies may establish appeal boards to hear and decide the exceptions. This should greatly reduce the time taken to reach the final result in agency proceedings because the work can be divided up among the agency members or delegated to appellate level hearing examiners. It will also mean that the agency members will have more time to devote to agency policymaking and this, in turn, will provide better guidance to the members of the public and the staff of the agency in connection with the work of the agency.

For the first time too, the amendments proposed in the bill provide specifically for the court in which the review can be had and for the procedure to be used in seeking review; and these improvements should provide a much better guide to the public in seeking judicial review of agency action.

There are many other aspects to this bill which I believe deserve very careful consideration because of the assistance which they may be to the public, such as provisions for the narrowing of the areas in which the agencies can act without notice or hearing, for the granting of the right of counsel which is now quite limited and for the opportunity to obtain a transcript of the proceeding.

I should like to call particular attention to the redraft of section 3 of the Administrative Procedure Act in the omnibus proposal being introduced by Senator DIRKSEN. It is identical with another proposal which I, Senator DIRKSEN, and other Senators are introducing today.

The primary purpose of introducing a separate bill on this public information section is to expedite action and focus attention on this important part of the Administrative Procedure Act.

Section 3 is a difficult part of the Administrative Procedure Act, but one which is in urgent need of revision. The separate bill on the subject has a long history and has wide bipartisan support, and we should be able to have our hearings on it this summer.

Although it may not be necessary, I wish to add a caveat to my sponsorship of

Senator DIRKSEN's omnibus bill and my introduction of the separate bill on section 3. Numerous and serious changes in the law are being proposed. I do not necessarily endorse all of them in principle or detail; but all of them have been suggested by responsible individuals and groups, and they are more than worthy of our study and consideration.

I believe that Senator DIRKSEN will join me in this caveat. We are convinced that the Administrative Procedure Act is in drastic need of overhaul. The way to get started is to introduce a bill which contains a number of suggested changes. These can be studied and commented upon by all interested parties. Only then can we say that we have made a real beginning.

Tribute should be paid, not only to Senator DIRKSEN for taking the lead in this matter, but also to Mr. Cornelius Kennedy, his very able counsel, who has done the bulk of the drafting work. Much credit is also due to the help and cooperation of our recently departed friend, Representative Francis Walter, and his able counsel, Mr. Joseph Hyman.

PERMANENT ADMINISTRATIVE CONFERENCE

Mr. LONG of Missouri. Mr. President, one of the most revered and highly deserving organs of Government today is the Judicial Conference of the United States. Its purposes and achievements with respect to improving our Federal judicial system are too well known to require recounting.

Unfortunately, there is no comparable permanent organ of Government to suggest improvements in the operating methods of the myriad quasi-judicial regulatory agencies, which govern such a large part of our national well being. A permanent Administrative Conference could make invaluable suggestions for ways to cut down on the length and cost of administrative procedures without endangering due process of law.

The bill which I am about to introduce is for this purpose.

This particular draft was completed by the Bureau of the Budget, with the assistance of the very able chairman of the temporary Administrative Conference, Judge E. Barrett Prettyman. The Bureau of the Budget has had the benefit of the views of various agencies concerned with the work of the Administrative Conference and has had the advice of the Council of the Administrative Conference appointed by the President.

By introduction of this bill, I am not in any way derogating the valuable work done by the previous two temporary Administrative Conferences. To the contrary, their success on a temporary basis points to the valuable service such as institution could perform if established on a permanent basis.

On December 17, 1962, the second temporary Conference, created by Executive order of President Kennedy in April 1961, submitted to the President its Final Report, including a recommendation that there be created by leg-

islative enactment just such a permanent Conference.

The temporary Conference consisted of some of the best and most experienced minds drawn from Federal executive departments and administrative agencies, the practicing bar, scholars in the fields of administrative law and government, and other persons of special qualifications. The Conference labored effectively and has produced studies and recommendations of utmost importance and value. In fact, I am hopeful that the Judiciary Committee will print their final report and selected documents of the Conference.

I am convinced that the temporary Conference is sound in its conclusion that there is an overwhelming need for a permanent body which will give continuous attention to these problems.

The problems of Federal regulation have grown so big, and the impact upon our economy is so great, that it is no longer good enough to operate under a system where these problems are allowed to grow and multiply until a supposed scandal hits the headlines, with a resultant demand for reform, and the appointment of another intermittent study group whose recommendations frequently vanish into thin air after the body goes out of existence.

As chairman of the Subcommittee on Administrative Practice and Procedure, I am convinced that the crying need is for continuous and objective attention to the manner in which Federal administrative regulation is functioning; for constant reexamination and reevaluation of existing methods, techniques and procedures to determine whether they can be improved, and to determine whether changes can or need to be made which would render administrative proceedings more effective and more fair.

Experience has taught us that the important objectives cannot be accomplished with maximum effectiveness if each Government agency is left to its own devices. Government agencies or departments are made up of normal human beings, subject to the normal human motivation to believe that things are fine as they are and that no change is required. In addition, agency personnel are so weighed down by the pressures of their immediate responsibilities that they are rarely able to devote substantial or significant force to the study of such procedural problems. It takes an effective complementary force to serve as a catalytic agent, to break down the resistance to change, to stir the agencies into an alert awareness of these problems and to urge them to make a serious reexamination of their methods and procedures.

In the past, such a force has come from the studies and investigations conducted from time to time by congressional committees, bar association groups, and other interested sources. Although the work done by such groups has been useful and fruitful, it is inevitably sporadic and intermittent in nature and cannot provide an effective long-range answer to the broad and complex problems involved here. Experience has demonstrated that in the absence of a permanent expert

body, charged with responsibility for making continuous studies and investigations in this field, the situation degenerates into one where each new group set up from time to time to attack these problems commences its examination all over again from point A—and occupies itself during a substantial part of its existence with a review of the material prepared by all of the preceding intermittent committees, which themselves started out at point A.

Experience also shows that under such a system, the conclusions reached and the recommendations made somehow ultimately vanish into thin air and never see the light of day in terms of their implementation by the agencies involved. Dramatic proof of this thesis was provided by the first Conference on Administrative Procedure, established in 1953. After 2 years of arduous effort, it submitted its final report and recommendations to the President in early 1955. Yet when the recent Administrative Conference of the United States was established by the President on April 13, 1961, it was felt by many people that only a very few of the recommendations of the first Conference had been carried into effect by the agencies in the ensuing 6-year period.

There is good reason to fear that the extensive and important recommendations for improvements in many areas of the administrative process, submitted to the President in December 1962 by the last Administrative Conference may well have a similar fate unless a permanent body, with a continuing interest and responsibility for implementing those recommendations, is created promptly by appropriate legislation.

The bill which I am introducing would provide for a full-time Chairman to be appointed by the President for a 5-year term; it would have a council of 11 members, including agency heads, distinguished members of the bar and others. The main body of the Conference, the Assembly, inter alia would additionally contain the heads of independent regulatory agencies, the heads of other major administrative programs, members of the bar, and scholars in the field of administrative law.

I wish to acknowledge the work done on this problem by Mr. Elmer Staats, Mr. Harold Seidman, and Miss Hazel Guffey of the Bureau of the Budget. I also wish to thank Mr. Harold Russell, a distinguished lawyer and high officer in the American Bar Association, for his most valuable contributions to our thinking on this problem; he has been extremely helpful and very patient. I know that he and other American Bar Association representatives will have a number of helpful suggestions to make at our hearings, which will be held on June 12, 13, and 14, 1963.

In conclusion, let me stress that the time to act on this problem is now, while the impetus of the work done by the last Administrative Conference and the interest in this subject is still live and fresh.

Congress has created these administrative agencies and has a vital interest in seeing to it that administrative reg-

ulation, with all its tremendous impacts upon our economy, functions with maximum effectiveness and fairness.

This is an objective upon which every Member of Congress can agree, admitting of no possible controversy.

This bill provides the opportunity for Congress to now take a giant step forward, by creating the machinery which will make the greatest possible contribution in the long run toward insuring that these objectives are met.

I ask that the bill be printed at this point in the RECORD.

The ACTING PRESIDENT pro tempore. The bill will be received and appropriately referred; and, without objection, the bill will be printed in the RECORD.

The bill (S. 1664) to provide for continuous improvement of the administrative procedure of Federal agencies by creating an Administrative Conference of the United States, and for other purposes, introduced by Mr. LONG of Missouri, was received, read twice by its title, referred to the Committee on the Judiciary, and ordered to be printed in the RECORD, as follows:

"Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Administrative Conference Act."

FINDINGS AND DECLARATION OF POLICY

SEC. 2. The Congress finds and declares that—

(a) Administration of regulatory and other statutes enacted by Congress in the public interest substantially affects large numbers of private individuals and many areas of business and economic activity;

(b) The protection of public and private interests requires continuing attention to the administrative procedure of Federal agencies to ensure maximum efficiency and fairness in achieving statutory objectives;

(c) The diversity of Federal activities frequently precludes the establishment by statute of administrative procedure which would be generally suitable for use by all agencies;

(d) Responsibility for assuring fair and efficient administrative procedure is inherent in the general responsibilities of officials appointed to administer Federal statutes;

(e) Experience has demonstrated that cooperative effort among Federal officials, assisted by private citizens and others whose interest, competence, and objectivity enable them to make a unique contribution, can find solutions to complex problems and achieve substantial progress in improving the effectiveness of administrative procedure; and

(f) It is the purpose of this Act to provide suitable arrangements through which Federal agencies, assisted by outside experts, may cooperatively study mutual problems, exchange information, and develop recommendations for action by proper authorities to the end that private rights may be fully protected and regulatory activities and other Federal responsibilities may be carried out expeditiously in the public interest.

DEFINITIONS

SEC. 3. As used in this Act—

(a) "Administrative program" includes any Federal function which involves protection of the public interest and the determination of rights, privileges, and obligations of private persons through "rule-making" or "adjudication" as those terms are defined in section 2 of the Administrative Procedure Act (5 U.S.C. 1001), except that it should not include.

(1) Any function or matter specified in section 4 (1) or (2) of the Act except to the extent that such function or matter consists of proceedings and decision-making required to be conducted in conformity with sections 7 and 8 of the Act or the imposition of penalties on private persons through agency action not subject to sections 7 and 8; or

(2) Any matter specified in section 5 (1), (3), (5), and (6) of the Act.

(b) "Administrative agency" includes all executive departments and any other Federal agency, including a constituent agency of an executive department, which carries out an administrative program.

(c) "Administrative procedure" means procedure used in carrying out an administrative program and shall be broadly construed to include any aspect of agency organization, procedure, or management which may affect the equitable consideration of public and private interests, the fairness of agency decisions, the speed of agency action, and the relationship of operating methods to later judicial review, but shall not be construed to include the scope of agency responsibility as established by law or matters of substantive policy committed by law to agency discretion.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

SEC. 4. (a) There is hereby established the Administrative Conference of the United States (hereinafter referred to as the "Conference").

(b) The Conference shall be composed preponderantly of Federal officials and personnel, including:

(1) A full-time Chairman, who shall be appointed for a five-year term by the President, by and with the advice and consent of the Senate. The Chairman shall receive compensation at the highest rate established by law for the chairman of an independent regulatory board or commission, and may continue to serve until his successor has been appointed and has qualified;

(2) The chairman of each independent regulatory board or commission;

(3) The head of each executive department or other administrative agency which is designated by the President;

(4) When authorized by the Council, an appointee from any such board, commission, department or agency, designated by the department or agency head or, in the case of a board or commission, by the chairman with the approval of the board or commission;

(5) Persons appointed by the President to membership on the Council hereinafter established who are not otherwise members of the Conference; and

(6) Other members in such number as will assure adequate representation of the viewpoints of private citizens and the utilization of diverse experience, who shall be appointed by the Chairman, with the approval of the Council, for terms of two years. Members appointed by the Chairman shall be members of the practicing bar, scholars in the field of administrative law or government, or others specially informed by knowledge and experience with respect to Federal administrative procedure.

(c) Each member under paragraphs (b) (2) and (b) (3), above, may designate an alternate member to represent him, as occasion requires, in plenary sessions or other activities of the Conference. The alternate member shall have all the obligations and privileges of full membership in the Conference on such occasions.

(d) Members of the Conference other than the Chairman shall receive no compensation for service, but members appointed from outside the Federal Government shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 73b-2) for persons serving without compensation.

DUTIES AND POWERS OF THE CONFERENCE

SEC. 5. To carry out the purposes of this Act the Conference is authorized to:

(a) Study the efficiency, adequacy, and fairness of the administrative procedure used by administrative agencies in carrying out administrative programs;

(b) Make recommendations to administrative agencies, collectively or individually, and to the President, the Congress, or the Judicial Conference of the United States, as it deems appropriate;

(c) Arrange for interchange among administrative agencies of information potentially useful in improving administrative procedure; and

(d) Collect from administrative agencies and publish such reports of operating statistics as it deems useful for evaluating and improving administrative procedure.

ORGANIZATION OF THE CONFERENCE

SEC. 6. (a) The membership of the Conference meeting in plenary session shall constitute the Assembly of the Conference. The Assembly shall have ultimate authority over all activities of the Conference. Specifically, it shall have power to (1) adopt such recommendations as it deems appropriate for improving administrative procedure: *Provided*, That any member or members who disagree with a recommendation adopted by the Assembly shall be accorded the privilege of entering dissenting opinions and alternative proposals in the record of Conference proceedings, and the opinions and proposals so entered shall accompany the Conference recommendation in any publication or distribution thereof; and (2) adopt bylaws and regulations not inconsistent with this Act for carrying out the functions of the Conference, including the creation of such committees as it deems necessary for the conduct of studies and the development of recommendations for consideration by the Assembly.

(b) The Conference shall include a Council composed preponderantly of Federal officials and personnel. The Council shall consist of the Chairman of the Conference, who shall be the Chairman of the Council, and ten other members appointed by the President for three-year terms, except that the Council members initially appointed shall serve for one, two, or three years, as designated by the President, and each member may continue to serve until a successor is appointed. The Council shall have power to (1) determine the time and place of plenary sessions of the Conference and the agenda for such meetings; (2) propose bylaws and regulations, including rules of procedure and committee organization, for adoption by the Assembly; (3) make recommendations to the Conference or its committees upon any subject germane to the purposes of the Conference; (4) receive and consider reports and recommendations of committees of the Conference and transmit them to members of the Conference with the views and recommendations of the Council; (5) designate a member of the Council to preside at meetings of the Council in the absence or incapacity of the Chairman and Vice Chairman; (6) designate such additional officers of the Conference as it may deem desirable; (7) approve or revise the Chairman's budgetary proposals; and (8) exercise such other powers as may be delegated to it by the Assembly.

(c) The Chairman shall be the chief executive of the Conference. In that capacity he shall have power to (1) make preliminary inquiries into matters he deems important for Conference consideration, including matters proposed by persons inside or outside the Federal Government; (2) be the official spokesman for the Conference in relations with the several branches and agencies of the Federal Government and with interested

organizations and individuals outside the Government, including responsibility for encouraging Federal agencies to effectuate the recommendations of the Conference; (3) request agency heads to provide information needed by the Conference, which information shall be supplied to the extent permitted by law or agency regulations; (4) recommend to the Council appropriate subjects for action by the Conference; (5) appoint, with the approval of the Council, members of committees authorized by the bylaws and regulations of the Conference; (6) prepare, for approval of the Council, estimates of the budgetary requirements of the Conference; (7) appoint employees, subject to the civil service and classification laws, define their duties and responsibilities, and direct and supervise their activities; (8) rent office space in the District of Columbia; (9) provide necessary services for the Assembly, the Council, and the committees of the Conference; (10) organize and direct studies ordered by the Assembly or the Council, utilizing from time to time, as appropriate, experts and consultants, who may be employed as authorized by section 15 of the Administrative Expenses Act of 1946, as amended (5 U.S.C. 55a), but at rates for individuals not to exceed \$100 per diem; (11) upon request of the head of any agency, furnish assistance and advice on matters of administrative procedure; and (12) exercise such additional authority as may be delegated to him by the Council or the Assembly. The Chairman shall preside at meetings of the Council and at each plenary session of the Conference, to which he shall make a full report concerning the affairs of the Conference since the last preceding plenary session. The Chairman shall, on behalf of the Conference, transmit to the President and the Congress an annual report and such interim reports as he deems desirable.

(d) The President may designate a member of the Council as Vice Chairman, who shall serve as Chairman in the event of a vacancy in that office or in the absence or incapacity of the Chairman.

APPROPRIATIONS

SEC. 7. There are hereby authorized to be appropriated such sums as may be necessary to accomplish the purposes of this Act.

Mr. DIRKSEN. Mr. President, I am delighted that my friend the Senator from Missouri [Mr. LONG] as introduced the bill to create a permanent Administrative Conference. I was an official delegate to the last Conference, representing the Senate; and I found that the Conference accomplished many good things. I have some reservations about some of the provisions in this bill drafted by the Bureau of the Budget, however; and I hope that in the course of hearings and committee consultation we shall be able to arrive at a bill which will be acceptable both to the Bureau and to the public and civic organizations which oppose parts of this bill.

FREEDOM OF INFORMATION

Mr. LONG of Missouri. Mr. President, knowledge will forever govern ignorance; and a people who mean to be their own governors must arm themselves with the power knowledge gives. A popular government without popular information or the means of acquiring it, is but a prologue to a farce or a tragedy, or perhaps both.

That paragraph should be printed in quotation marks, which were omitted to emphasize the present validity of a statement made almost 200 years ago. It was

made by James Madison, who was chairman of the committee which drafted the first amendment.

Madison also pointed out that—

The right of freely examining public characters and measures, and of free communication thereon, is the only effectual guardian of every other right.

Madison's contemporary, Thomas Jefferson had this to say on the subject:

The basis of our governments being the opinion of the people, the very first object should be to keep that right. The way to prevent [errors of] the people, is to give them full information of their affairs through the channel of the public papers, and to contrive that these papers shall penetrate the whole mass of the people.

It is difficult, if not impossible, for anyone to improve on the way in which our distinguished Founding Fathers stated these verities. I shall certainly not attempt to do so.

However, this does not prevent my reiteration of their absolute validity today as much as in the days of Jefferson and Madison.

The public is helpless if it cannot obtain the facts about its government. Without the facts it will inevitably excuse the errors of its public officials. And public officials in all ages and places are prone to hide their errors behind a cloak of secrecy.

As we all know, there must be more limits to public knowledge of governmental facts. For example, we must apply restrictions for purposes of national defense.

However the restricted areas should be confined to the narrowest possible extent if the ends of good government are to be served.

One place where the restricted areas are much broader than the dictates of popular democracy require is in section 3 of the Administrative Procedure Act of 1946.

This section, which governs the information policies of all of the so-called independent regulatory agencies and several more executive agencies, is much too weak and loosely drawn to satisfy the requirements of an informed public.

There is no need to quarrel with the drafters of that section or the earlier Congress which approved it. However, time and interpretation have shown that it is woefully inadequate today.

Each year brings new instances of Government agencies and bureaus withholding information which the public has a right to have. We in the Congress have a duty to see that it is made available.

We cannot effectively complain that the regulatory agencies are withholding needed information from the public when we, the Congress, passed the law under which they do so.

Therefore, on behalf of myself and Senators BARTLETT, BATH, CASE, DIRKSEN, GRUENING, HART, KEATING, KEFAUVER, METCALF, MORSE, NEUBERGER, PROXMIRE, and SYMINGTON, I introduce a bill which will revise this section of the law, and which is aimed at providing greater "freedom of information." It is an honor to have a large number of my distinguished colleagues as cosponsors.

Our objectives in introducing this bill are to make information in Government

agencies more readily available and to delineate more clearly the areas in which and the purposes for which information may be withheld.

This year has brought added interest to the "freedom of information" problem, perhaps because of the charges of "managed" news. But, managed news is an elusive term, a term which does not truly highlight the problem. All news is managed in some way; in the way it is selected for reporting, in the way it is written, edited, and placed in a newspaper.

As stated recently in a report to the American Society of Newspaper Editors by its freedom of information committee:

There has been a growing awareness among the press and the public of the problems of news handling. Still, there is not always a clear understanding of the distinction between news management—a misnomer, because all news is "managed" in some fashion—and the denial of access to news sources or the outright distortion of news by official sources.

Primarily, it is this latter problem to which we address ourselves.

Government agencies control billions of taxpayer dollars each year, and the regulatory agencies control many billions more of consumer dollars in the vital areas of power, transportation, fuel, communications, securities, and trade. In order to insure that this money is being wisely spent and our industries properly controlled, we must be able to have continuous supervision over their activities. The past has disclosed many instances where our Government officials have not exercised the wisest discretion. But, many more have gone undiscovered, partly because information of such indiscretions has been covered with the cloak of secrecy.

As I said earlier, only an informed electorate can ride herd over these agencies. But we must be truly informed. The mimeographed release of the agency alone is not enough. The records which are kept by agencies are public records; the rules and orders which agencies issue are for the benefit of the public; the opinions which our regulatory agencies issue—including dissenting opinions—are also for the benefit of the public; and public these records must be.

Agencies may suppress information merely to preserve what they conceive to be their public image and to avoid harsh criticism. But it is this very possibility of criticism which plays such an important role in keeping Government in check.

Granted, it would be far easier to label a piece of adverse information "classified" than make it accessible and have to suffer the consequences—but when this is done, the public has lost a right.

One of the most interested parties in the whole area of "freedom of information" has been the American press. The national professional journalism fraternity, Sigma Delta Chi, the American Society of Newspaper Editors, and many other journalism groups have long worked for news availability both on the State and National level. They are to be congratulated for their stubborn refusal

to give up the fight. Their determination has strengthened the resolve of those of us in this Congress who insist on waging the same struggle.

Particular credit should go to the Freedom of Information Center which was created in the School of Journalism at the University of Missouri in 1959. This center, which is a first in the field, has dedicated itself to preserving the freedom of press and speech. We in Missouri are justifiably proud of the fine record that the center has established in our Nation.

The American Bar Association has also done a great deal in the effort to pass progressive legislation in this important field. They have helped draft legislation and have worked tirelessly for its passage.

The history of the "freedom of information" movement has been long, varied, but, for the most part, unsuccessful. At the present time there is no Federal law setting forth an adequate general information policy. In the 85th Congress, the late Senator Thomas C. Hennings, Jr., and Congressman JOHN E. Moss introduced bills to revise the old "house-keeping" statute. The resulting act provides that the statute shall not be construed as an excuse for secrecy. Senators JOHN A. Carroll, William Proxmire, Philip A. Hart, and myself introduced S. 1567 in the 87th Congress, but no legislation was passed.

In summary, the bill which we are introducing today would—

First. Require each agency to publish in the Federal Register (a) descriptions of its organization and places where the public may obtain information, (b) statements of the general course and procedure by which its functions are performed, and (c) substantive rules and statements of general policy.

Second. Make available for inspection and copying all final agency opinions, statements of policy and interpretation for the guidance of the public.

Third. Require an index be kept of opinions, rules, and orders; and deny agencies the right to use an order, opinion, or rule as a precedent unless it has been made available to the party in issue.

Fourth. Require agencies to specify times, places, and procedures for the inspection of their records.

Fifth. Require agencies to make public the individual votes of each member.

The bill provides for three main exceptions: First, where there is a statute providing for exemption; second, where a matter relates solely to the internal workings of an agency; and third, where secrecy is vital to the national defense.

As has been said before, the great strength of a democracy is that it does not operate behind closed doors. It is my hope that this time legislation will result, that it will strike a blow at agency secrecy, and that in the end it will provide for greater economy and fairness in government.

Mr. President, as the text of the bill is very short, I ask unanimous consent that it be printed at this point in the RECORD.

Mr. President, I introduce this bill, for appropriate reference; and I ask unani-

mous consent that it be held at the desk for a calendar week, so that other Senators may join as cosponsors.

The ACTING PRESIDENT pro tempore. The bill will be received and appropriately referred; and, without objection, the bill will be printed in the RECORD, and will lie on the desk, as requested by the Senator from Missouri.

The bill (S. 1666) to amend section 3 of the Administrative Procedure Act, chapter 324, of the act of June 11, 1946 (60 Stat. 238), to clarify and protect the right of the public to information and for other purposes introduced by Mr. LONG of Missouri (for himself and other Senators), was received, read twice by its title, referred to the Committee on the Judiciary, and ordered to be printed in the RECORD, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That section 3 of chapter 324 of the Act of June 11, 1946 (60 Stat. 238) is amended to read as follows:

SEC. 3(a) PUBLICATION IN THE FEDERAL REGISTER.—Except to the extent that there is involved (1) any function of the United States requiring secrecy in the public interest or (2) any matter relating solely to the internal management of any agency, every agency shall separately state and currently publish in the Federal Register (A) descriptions of its central and field organization including delegations by the agency of authority and the established places at which, and methods whereby, the public may secure information or make submittals or requests; (B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal or informal procedures available, rules of procedure, descriptions of forms available and instructions as to the scope and contents of all papers, reports, or examinations; (C) substantive rules adopted as authorized by law and statements of general policy or interpretations formulated and adopted by the agency for the guidance of the public and (D) every amendment, revision or repeal of the foregoing. No person shall in any manner be required to resort to, or be bound or adversely affected by any organization, procedure, or other rule, statement, or interpretation thereof required to be published in the Federal Register and not so published.

"(b) AGENCY OPINIONS, ORDERS, AND RULES.—Except to the extent that matter (1) is specifically exempted from disclosure by statute, or (2) involves any function of the United States requiring secrecy to protect the national defense and is specifically exempted from disclosure by executive order or (3) relates solely to the internal employment rules and practices of any agency, every agency shall, in accordance with published rules, make available for public inspection and copying all final opinions (including concurring and dissenting opinions) and orders made in the adjudication of cases and all rules, statements of policy and interpretations adopted by the agency and affecting the public, unless such opinions, orders, rules, statements and interpretations are promptly published and copies offered for sale. To the extent required to protect the public interest an agency may delete identifying details when it makes available or publishes an opinion, order, rule, statement or interpretation; however in such cases the justification for the deletion must be fully explained in writing. Every agency also shall maintain and make available for public inspection and copying a current index providing adequate information for the public as to each final order, opinion,

88TH CONGRESS
1ST SESSION

H. R. 7200

IN THE HOUSE OF REPRESENTATIVES

JUNE 24, 1963

Mr. HARRIS introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To provide for continuous improvement of the administrative procedure of Federal agencies by creating an Administrative Conference of the United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Administrative Confer-
4 ence Act".

5 FINDINGS AND DECLARATION OF POLICY

6 SEC. 2. The Congress finds and declares that—

7 (a) administration of regulatory and other statutes
8 enacted by Congress in the public interest substantially
9 affects large numbers of private individuals and many
10 areas of business and economic activity;

1 (b) the protection of public and private interests
2 requires continuing attention to the administrative proce-
3 dure of Federal agencies to insure maximum efficiency
4 and fairness in achieving statutory objectives;

5 (c) the diversity of Federal activities frequently
6 precludes the establishment by statute of administrative
7 procedure which would be generally suitable for use by
8 all agencies;

9 (d) responsibility for assuring fair and efficient
10 administrative procedure is inherent in the general
11 responsibilities of officials appointed to administer Fed-
12 eral statutes;

13 (e) experience has demonstrated that cooperative
14 effort among Federal officials, assisted by private citizens
15 and others whose interest, competence, and objectivity
16 enable them to make a unique contribution, can find solu-
17 tions to complex problems and achieve substantial prog-
18 ress in improving the effectiveness of administrative pro-
19 cedure; and

20 (f) it is the purpose of this Act to provide suitable
21 arrangements through which Federal agencies, assisted
22 by outside experts, may cooperatively study mutual prob-
23 lems, exchange information, and develop recommenda-
24 tions for action by proper authorities to the end that
25 private rights may be fully protected and regulatory ac-

tivities and other Federal responsibilities may be carried out expeditiously in the public interest.

DEFINITIONS

SEC. 3. As used in this Act—

(a) "Administrative program" includes any Federal function which involves protection of the public interest and the determination of rights, privileges, and obligations of private persons through "rulemaking" or "adjudication" as those terms are defined in section 2 of the Administrative Procedure Act (5 U.S.C. 1001), except that it shall not include—

(1) any function or matter specified in section 4 (1) or (2) of the Act except to the extent that such function or matter consists of proceedings and decisionmaking required to be conducted in conformity with sections 7 and 8 of the Act or the imposition of penalties on private persons through agency action not subject to sections 7 and 8; or

(2) any matter specified in section 5 (1), (3), (5), and (6) of the Act.

(b) "Administrative agency" includes all executive departments and any other Federal agency, including a constituent agency of an executive department, which carries out an administrative program.

(c) “Administrative procedure” means procedure used

1 in carrying out an administrative program and shall be
2 broadly construed to include any aspect of agency organiza-
3 tion, procedure, or management which may affect the equi-
4 table consideration of public and private interests, the fairness
5 of agency decisions, the speed of agency action, and the
6 relationship of operating methods to later judicial review,
7 but shall not be construed to include the scope of agency
8 responsibility as established by law or matters of substantive
9 policy committed by law to agency discretion.

10 ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

11 SEC. 4. (a) There is hereby established the Admin-
12 istrative Conference of the United States (hereinafter re-
13 ferred to as the "Conference").

14 (b) The Conference shall be composed preponderantly
15 of Federal officials and personnel, including—

16 (1) a full-time Chairman, who shall be appointed
17 for a five-year term by the President, by and with the
18 advice and consent of the Senate. The Chairman shall
19 receive compensation at the highest rate established by
20 law for the chairman of an independent regulatory
21 board or commission, and may continue to serve until
22 his successor has been appointed and has qualified;

23 (2) the chairman of each independent regulatory
24 board or commission;

25 (3) the head of each executive department or other

1 administrative agency which is designated by the
2 President;

3 (4) when authorized by the Council, an appointee
4 from any such board, commission, department, or
5 agency, designated by the department or agency head
6 or, in the case of a board or commission, by the Chair-
7 man with the approval of the board or commission;

8 (5) persons appointed by the President to mem-
9 bership upon the Council hereinafter established who are
10 not otherwise members of the Conference; and

11 (6) other members in such number as will assure
12 adequate representation of the viewpoints of private citi-
13 zens and the utilization of diverse experience, who shall
14 be appointed by the Chairman, with the approval of the
15 Council, for terms of two years. Members appointed
16 by the Chairman shall be members of the practicing
17 bar, scholars in the field of administrative law or govern-
18 ment, or others specially informed by knowledge and
19 experience with respect to Federal administrative
20 procedure.

21 (c) Each member under paragraphs (b) (2) and
22 (b) (3), above, may designate an alternate member to repre-
23 sent him, as occasion requires, in plenary sessions or other
24 activities of the Conference. The alternate member shall

1 have all the obligations and privileges of full membership
2 in the Conference on such occasions.

3 (d) Members of the Conference other than the Chair-
4 man shall receive no compensation for service, but members
5 appointed from outside the Federal Government shall be
6 allowed travel expenses, including per diem in lieu of sub-
7 sistence, as authorized by law (5 U.S.C. 73b-2) for per-
8 sons serving without compensation.

9 DUTIES AND POWERS OF THE CONFERENCE

10 SEC. 5. To carry out the purposes of this Act the Con-
11 ference is authorized to—

12 (a) study the efficiency, adequacy, and fairness of
13 the administrative procedure used by administrative
14 agencies in carrying out administrative programs;

15 (b) make recommendations to administrative
16 agencies, collectively or individually, and to the Presi-
17 dent, the Congress, or the Judicial Conference of the
18 United States, as it deems appropriate;

19 (c) arrange for interchange among administrative
20 agencies of information potentially useful in improving
21 administrative procedure; and

22 (d) collect from administrative agencies and pub-
23 lish such reports of operating statistics as it deems useful
24 for evaluating and improving administrative procedure.

ORGANIZATION OF THE CONFERENCE

SEC. 6. (a) The membership of the Conference meeting in plenary session shall constitute the Assembly of the Conference. The Assembly shall have ultimate authority over all activities of the Conference. Specifically, it shall have power to (1) adopt such recommendations as it deems appropriate for improving administrative procedure: *Provided*, That any member or members who disagree with a recommendation adopted by the Assembly shall be accorded the privilege of entering dissenting opinions and alternative proposals in the record of Conference proceedings, and the opinions and proposals so entered shall accompany the Conference recommendation in any publication or distribution thereof; and (2) adopt bylaws and regulations not inconsistent with this Act for carrying out the functions of the Conference, including the creation of such committees as it deems necessary for the conduct of studies and the development of recommendations for consideration by the Assembly.

(b) The Conference shall include a Council composed preponderantly of Federal officials and personnel. The Council shall consist of the Chairman of the Conference, who shall be the Chairman of the Council, and ten other members appointed by the President for three-year terms, except that the Council members initially appointed shall

1 serve for one, two, or three years, as designated by the
2 President, and each member may continue to serve until a
3 successor is appointed. The Council shall have power to
4 (1) determine the time and place of plenary sessions of
5 the Conference and the agenda for such meetings; (2) pro-
6 pose bylaws and regulations, including rules of procedure
7 and committee organization, for adoption by the Assembly;
8 (3) make recommendations to the Conference or its com-
9 mittees upon any subject germane to the purposes of the
10 Conference; (4) receive and consider reports and recom-
11 mendations of committees of the Conference and transmit
12 them to members of the Conference with the views and
13 recommendations of the Council; (5) designate a member
14 of the Council to preside at meetings of the Council in the
15 absence or incapacity of the Chairman and Vice Chairman;
16 (6) designate such additional officers of the Conference as
17 it may deem desirable; (7) approve or revise the Chair-
18 man's budgetary proposals; and (8) exercise such other
19 powers as may be delegated to it by the Assembly.

20 (c) The Chairman shall be the chief executive of the
21 Conference. In that capacity he shall have power to (1)
22 make preliminary inquiries into matters he deems important
23 for Conference consideration, including matters proposed by
24 persons inside or outside the Federal Government; (2) be
25 the official spokesman for the Conference in relations with

1 the several branches and agencies of the Federal Government
2 and with interested organizations and individuals outside the
3 Government, including responsibility for encouraging Fed-
4 eral agencies to effectuate the recommendations of the Con-
5 ference; (3) request agency heads to provide information
6 needed by the Conference, which information shall be
7 supplied to the extent permitted by law or agency regula-
8 tions; (4) recommend to the Council appropriate subjects
9 for action by the Conference; (5) appoint, with the approval
10 of the Council, members of committees authorized by the
11 bylaws and regulations of the Conference; (6) prepare, for
12 approval of the Council, estimates of the budgetary require-
13 ments of the Conference; (7) appoint employees, subject
14 to the civil service and classification laws, define their duties
15 and responsibilities, and direct and supervise their activities;
16 (8) rent office space in the District of Columbia; (9) pro-
17 vide necessary services for the Assembly, the Council, and
18 the committees of the Conference; (10) organize and direct
19 studies ordered by the Assembly or the Council, utilizing
20 from time to time, as appropriate, experts and consultants,
21 who may be employed as authorized by section 15 of the
22 Administrative Expenses Act of 1946, as amended (5
23 U.S.C. 55a), but at rates for individuals not to exceed \$100
24 per diem; (11) upon request of the head of any agency,
25 furnish assistance and advice on matters of administrative

1 procedure; and (12) exercise such additional authority as
2 may be delegated to him by the Council or the Assembly.
3 The Chairman shall preside at meetings of the Council and
4 at each plenary session of the Conference, to which he shall
5 make a full report concerning the affairs of the Conference
6 since the last preceding plenary session. The Chairman
7 shall, on behalf of the Conference, transmit to the President
8 and the Congress an annual report and such interim reports
9 as he deems desirable.

10 (d) The President may designate a member of the
11 Council as Vice Chairman, who shall serve as Chairman
12 in the event of a vacancy in that office or in the absence or
13 incapacity of the Chairman.

14 APPROPRIATIONS

15 SEC. 7. There are hereby authorized to be appropriated
16 such sums as may be necessary to accomplish the purposes
17 of this Act.

88TH CONGRESS
1ST SESSION

H. R. 7200

A BILL

To provide for continuous improvement of the administrative procedure of Federal agencies by creating an Administrative Conference of the United States, and for other purposes.

By Mr. HARRIS

JUNE 24, 1963

Referred to the Committee on the Judiciary

88TH CONGRESS
1ST SESSION

H. R. 7201

IN THE HOUSE OF REPRESENTATIVES

JUNE 24, 1963

Mr. HARRIS introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To provide for continuous improvement of the administrative procedure of Federal agencies by creating an Administrative Conference of the United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the “Administrative Confer-
4 ence Act of 1963”.

5 FINDINGS AND DECLARATION OF POLICY

6 SEC. 2. The Congress finds and declares that—

7 (a) Administration of regulatory and other statutes
8 enacted by Congress in the public interest substantially
9 affects large numbers of private individuals and many
10 areas of business and economic activity;

1 (b) The protection of public and private interests
2 requires continuous attention to the administrative pro-
3 cedure of Federal agencies to insure maximum efficiency
4 and fairness in achieving statutory objectives;

5 (c) Responsibility for assuring fair and efficient
6 administrative procedure is inherent in the general re-
7 sponsibilities of officials appointed to administer Federal
8 statutes;

9 (d) Experience has demonstrated that cooperative
10 effort among Federal officials, private citizens and others
11 whose interest, competence, and objectivity enable them
12 to make a valuable contribution, can find solutions to
13 complex problems and achieve substantial progress in
14 improving the effectiveness of administrative procedure;
15 and

16 (e) It is the purpose of this Act to provide suitable
17 arrangements through which Federal officials and other
18 persons as herein provided may cooperatively study
19 mutual problems, exchange information, and develop
20 recommendations for action by proper authorities to the
21 end that private rights may be fully protected and regu-
22 latory activities and other Federal responsibilities may
23 be carried out expeditiously in the public interest.

DEFINITIONS

SEC. 3. As used in this Act—

(a) “Administrative program” means any agency proceeding or action as defined by section 1001 (g) of chapter 19 of title 5 of the United States Code.

(b) “Agency” means any Federal agency, including a constituent agency of an executive department, which carries out an administrative program.

(c) “Administrative procedure” means procedure used in carrying out an administrative program, and shall be broadly construed to include any aspect of agency organization, procedure, and management which may affect the equitable consideration of public and private interests, the fairness of agency decisions, the speed of agency action, and the relationship of operating methods to later judicial review, but shall not be construed to include the scope of substantive agency responsibility as established by law or matters of substantive policy committed by law to agency discretion.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

SEC. 4. (a) There is hereby established the Administrative Conference of the United States (hereinafter referred to as the “Conference”).

1 (b) The Conference shall be composed of a Chairman,
2 a Council, and an Assembly, constituted in the manner here-
3 inafter provided. The Conference shall maintain an office
4 at the seat of government.

5 SEC. 5. The Chairman shall be appointed by the Presi-
6 dent with the advice and consent of the Senate to serve for a
7 term of five years and thereafter until his successor shall be
8 appointed and has qualified. The Chairman shall receive
9 compensation at the highest rate established by law for an
10 Under Secretary of an executive department of the Federal
11 Government.

12 SEC. 6. The Council shall consist of the Chairman of
13 the Conference (who shall be the Chairman of the Council)
14 and ten other members appointed by the President. The
15 membership of the Council shall reflect diverse experience in
16 the field of administrative procedure and shall include at
17 least five members of the bar in private practice. Not more
18 than six members of the Council shall be members of the
19 same political party. The members of the Council (other
20 than the Chairman) shall be appointed for terms of three
21 calendar years except that the members initially appointed
22 shall serve for one, two, or three years as designated by the
23 President. Each of their successors shall be appointed for a
24 term of three years from the date of the expiration of the
25 term for which his predecessor was appointed, except that

any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of such predecessor. Each member of the Council shall serve until his successor is appointed and qualified. Any vacancy on the Council shall be filled by the President by appointment from among persons eligible for original appointment to the vacant position.

SEC. 7. (a) The Assembly shall consist of the members of the Council and persons from the agencies and members of the practicing bar, scholars in the field of administrative law and government, and others specially informed by knowledge and experience with respect to Federal administrative practice and procedure. The composition of the Assembly and its total number shall be determined from time to time by the Council: *Provided*, That members from outside the Federal Government shall be appointed in such numbers as will assure adequate representation of the public and reflection of diverse experience, but in no event shall more than 50 per centum of the membership be members of the bar in private practice nor shall more than 50 per centum of the membership be persons from the agencies. The Council shall designate the agencies from which members shall be named and the number of such members from

1 each, having due regard for the extent of the administrative
2 programs of the respective agencies. The head of the
3 agency or, if the agency is a board or commission, its chair-
4 man with the approval of the board or commission, shall
5 name a member or members from such agency. Other
6 members (except as provided in paragraph (c) hereof)
7 shall be named by the Council. Each member of the As-
8 sembly shall participate in his individual capacity and not
9 as a representative of any governmental or nongovernmental
10 organization. All members of the Assembly except the
11 members of the Council shall be appointed for terms of
12 two calendar years, except that the terms of initial members
13 of the Assembly shall end December 31, 1964.

14 (b) A member of the Assembly designated from an
15 agency shall become ineligible to continue as a member of
16 the Assembly under that designation if he leaves the service
17 of that agency. A member not from an agency shall become
18 ineligible to continue as a member of the Assembly in that
19 capacity if he enters the regular service of the Federal Gov-
20 ernment. If a member resigns, becomes ineligible, or is
21 otherwise unable to continue as a member of the Assembly,
22 the appointing authority that named him shall designate a
23 successor for the remainder of his term.

24 (c) There shall be appointed from each Congress as
25 members of the Assembly (1) by the President of the Sen-

ate, three Members of the Senate and as alternates three members of the staffs of committees of the Senate, and (2) by the Speaker of the House of Representatives, three Members of the House of Representatives and as alternates three members of the staffs of committees of the House of Representatives. The Chief Justice of the United States shall be invited by the Council to appoint from the Judicial Conference of the United States three members of the Assembly and three alternate members.

DUTIES AND POWERS OF THE CONFERENCE

SEC. 8. To carry out the purposes of this Act the Conference shall—

(a) study the efficiency, adequacy, and fairness of the administrative procedure used by Federal agencies to carry out administrative programs in the public interest and to determine the rights, privileges and obligations of private persons;

(b) make recommendations to the agencies, collectively or individually, and to the President, the Congress, or the Judicial Conference of the United States, as it deems appropriate, including recommendations for preventing undue delay and expense and unduly long records and for establishing insofar as practicable uniform procedures and rules of practice;

(c) arrange for interchange among the agencies of

1 information which may be useful in improving admin-
2 istrative procedure;

3 (d) collect information from the agencies and pub-
4 lish such reports as it deems useful for evaluation and
5 improvement of administrative procedure; and

6 (e) foster cooperative efforts among the agencies
7 and members of the bar to bring about improvements
8 in administrative procedure.

9 OPERATION OF THE CONFERENCE

10 SEC. 9. The Chairman shall be the chief executive and
11 administrative officer of the Conference and devote his full
12 time and energies to the duties of his office. He shall—

13 (a) encourage and stimulate agency action to effec-
14 tuate the purposes and functions of the Conference and
15 to implement its recommendations;

16 (b) be the spokesman for and representative of the
17 Conference in relations with the several branches and
18 agencies of the Federal Government and with persons
19 and organizations outside the Federal Government;

20 (c) make inquiries into matters for Conference con-
21 sideration, including matters proposed by persons inside
22 or outside the Federal Government and recommend
23 appropriate subjects for action by the Conference;

24 (d) obtain from the agencies information needed by
25 the Conference or the Chairman in effectuating the pur-

1 poses and functions of the Conference, which information
2 shall be supplied by the agencies upon his request;

3 (e) upon request of any agency, furnish assistance
4 and advice on matters of administrative procedure;

5 (f) prepare for the approval of the Council esti-
6 mates of the budgetary requirements of the Conference;

7 (g) appoint employees, subject to the civil service
8 and classification laws, define their duties and responsi-
9 bilities, and direct and supervise their activities;

10 (h) rent office space at the seat of government;

11 (i) provide necessary services for the Assembly,
12 the Council, and committees of the Conference;

13 (j) organize and direct studies for Conference pur-
14 poses, utilizing from time to time, as appropriate, experts
15 and consultants, who may be employed as authorized by
16 section 15 of the Administrative Expenses Act of 1946,
17 as amended (5 U.S.C. 55a), but at rates for individuals
18 not to exceed \$100 per diem; and

19 (k) exercise such additional authority as may be
20 delegated to him by the Council or the Assembly.

21 SEC. 10. The Council shall:

22 (a) determine the time and agenda of sessions of
23 the Assembly;

24 (b) propose bylaws and regulations, including

1 rules of procedure and committee organization, for adop-
2 tion by the Assembly;

3 (c) appoint members of committees authorized by
4 the bylaws and regulations of the Assembly;

5 (d) make recommendations to the Assembly or its
6 committees on any subject germane to the purposes of the
7 Conference;

8 (e) receive and consider reports and recommenda-
9 tions of committees of the Assembly and transmit them
10 to the Assembly with the views and recommendations of
11 the Council;

12 (f) designate a member of the Council as Vice
13 Chairman to act in the absence or incapacity of the
14 Chairman;

15 (g) designate such additional officers of the Con-
16 ference as it may deem desirable;

17 (h) approve or revise the Chairman's budgetary
18 proposals; and

19 (i) exercise such other powers as may be delegated
20 to it by the Assembly.

21 SEC. 11. (a) The Assembly shall have ultimate authority
22 over the activities of the Conference, but this shall not be
23 construed to limit the independent powers granted the Chair-
24 man under this Act. It shall: (1) adopt such recommenda-
25 tions as it deems appropriate for improving administrative

1 procedure; and (2) adopt bylaws and regulations not incon-
2 sistent with this Act for carrying out the functions of the
3 Conference, including the creation of such committees as it
4 deems necessary for the conduct of studies and the develop-
5 ment of recommendations for consideration by the Confer-
6 ence. The Conference shall not entertain requests to study
7 bills pending in Congress but this shall not be deemed to
8 limit the subject matter of any study or report of the Con-
9 ference.

10 (b) The members of the Assembly shall meet in plenary
11 session at the seat of Government at least once each year and
12 at such other times as may be determined by the Council.
13 At meetings of the Assembly, the Chairman shall preside but
14 shall have no vote unless the Assembly shall be equally
15 divided. At each plenary session the Chairman shall make a
16 full report concerning the affairs of the Conference since the
17 last preceding plenary session.

18 (c) The Chairman shall transmit an annual report of
19 the Conference to the President and the Congress and may
20 submit supplemental and interim reports to the President,
21 the Congress, the Judicial Conference, or any agency.

22 (d) Any member of the Conference may express to the
23 Congress, the President, or others his views concerning
24 matters within the cognizance of the Conference.

GENERAL

SEC. 12. Membership in or service to the Conference by persons outside the Federal Government, whether compensated or not, shall not be considered as service or employment bringing such individuals within the provisions of sections 203, 205, 207, 208, or 209 of chapter 11 of title 18 of the United States Code.

SEC. 13. (a) All members of the Conference other than the Chairman shall serve without compensation but shall be reimbursed for actual expenses incurred in connection with the functions of the Conference;

(b) The Chairman may make such expenditures (including expenditures for rent and personal services, office employees, travel, law books, periodicals, books of reference, printing and binding, and studies or investigations) as may be necessary for the execution of his functions and the functions of the Council and the Conference, out of appropriations made from time to time by Congress. Expenditures of the Chairman, the Council, and the Conference shall be allowed and paid only on presentation of itemized vouchers therefor approved by the Chairman or such other person or persons as may be designated for that purpose by the Chairman with the approval of the Council;

1 (c) There are hereby authorized to be appropriated
2 such sums as may be necessary to accomplish the purposes
3 of this Act.

A BILL

To provide for continuous improvement of the administrative procedure of Federal agencies by creating an Administrative Conference of the United States, and for other purposes.

By Mr. HARRIS

JUNE 24, 1963

Referred to the Committee on the Judiciary

and in order to remedy deficiencies which have been disclosed by experience or arbitration awards.

Every effort should be made to incorporate in the new agreements beneficial provisions previously made part of some of the basic agreements and those set forth in prior wage policies.

LEGISLATION TO ESTABLISH A PERMANENT ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

(Mr. HARRIS asked and was given permission to address the House for 1 minute, and to revise and extend his remarks.)

Mr. HARRIS. Mr. Speaker, I have introduced today four bills, all of which have the same objective, namely to establish a permanent Administrative Conference of the United States. I would like to explain why I have introduced several bills on this subject. The first bill might be referred to as the administration bill. It incorporates essentially the recommendations submitted by the temporary Administrative Conference, which was created on April 13, 1961, by Executive Order No. 10934, with regard to the organization of a permanent Administrative Conference. These recommendations were contained in its final report to the President dated December 15, 1962.

The second bill incorporates the recommendations of the American Bar Association with regard to the establishment of a permanent Administrative Conference. The second bill differs from the first bill primarily with regard to the membership of the Conference and the responsibilities of the Director of the Administrative Conference.

The first two bills are general bills dealing with all administrative agencies including independent regulatory agencies, executive departments, and any other Federal agency which carries out an administrative program.

The third bill is an adaptation of the administration bill but it is limited to those independent regulatory agencies which come within the legislative jurisdiction of the Committee on Interstate and Foreign Commerce; namely, the Civil Aeronautics Board, Federal Communications Commission, Federal Power Commission, Federal Trade Commission, Interstate Commerce Commission, or the Securities and Exchange Commission.

The fourth bill is an adaptation of the bill favored by the American Bar Association and again it is limited to the aforementioned six independent regulatory agencies within the jurisdiction of the Committee on Interstate and Foreign Commerce.

It is my hope that the Judiciary Committee will give favorable consideration to the first two bills and that a permanent Administrative Conference will be established which will cover all administrative agencies as provided in these two bills.

However, I consider the establishment of a permanent Administrative Conference so important that I would prefer seeing it established on a limited basis rather than having no permanent conference at all. Therefore, I have intro-

duced the third and fourth bills having in mind that such a conference should deal at least with the problems common to the independent regulatory agencies which come within the jurisdiction of our Committee on Interstate and Foreign Commerce.

Mr. Speaker, I feel that the temporary Administrative Conference did a very worthwhile job indeed, and it did a very important job in connection with ex parte communications which at times have been a serious problem in connection with the proceedings of several of the independent regulatory agencies within our jurisdiction.

The temporary Administrative Conference adopted a set of recommendations with regard to ex parte communications and several of the independent regulatory agencies have already carried out these recommendations and have adopted specific agency regulations which implement the recommendations on the Conference in this field.

Mr. Speaker, the problems faced by administrative agencies and particularly the independent regulatory agencies are very real. Several astute observers of the administrative process as for example a former member of the Civil Aeronautics Board, Mr. Hector, and the former chairman of the Federal Communications Commission, Mr. Minow, have been highly critical of the organization and procedures of the independent regulatory agencies, of which they were members.

It is my conviction that the questions which these two men and others have raised in connection with the administrative process can be dealt with appropriately, at least in part, by a permanent Administrative Conference. I consider such a conference as an aid to the Congress and I do not believe that the authority to make recommendations which would be granted to such a conference in any way derogates from the power of the Congress to exercise legislative oversight.

Mr. Speaker, it is my hope that a permanent Administrative Conference of the United States will be created by statute in this session of the Congress and I am confident that the differences which exist with regard to the membership, organization, and procedures of such a conference can be worked out without too much difficulty.

IMMEDIATE STUDY OF FEDERAL INTERSTATE HIGHWAY MILEAGE ALLOCATION IMPERATIVE

(Mr. FASCELL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FASCELL. Mr. Speaker, the National System of Interstate and Defense Highways was established in 1944 with an authorization of 40,000 miles. The only other action the Congress has taken was in 1956 when an additional 1,000 miles for the Federal Interstate Highway System was authorized.

Today, with the enormous expansion in the number of automobiles in the United States and the corresponding in-

crease in use of the Nation's highways, this Congress should give careful consideration to an increase in the allotted mileage of the National System of Interstate and Defense Highways. This increase should be designed to cope effectively with the expansion in automobile and truck traffic on the Nation's highways and the Nation's growing defense requirements.

Congress has recognized that this problem cannot be effectively coped with on the local or State level. The magnitude of need and the corresponding cost requirement make Federal participation mandatory.

In my own State of Florida there is a pressing need for a large limited access highway between Tampa on the west coast and Miami on the east coast. So as to call attention to this need I introduced bills in the 85th, 86th, and 87th Congresses to provide for an increase in the authorized mileage in the National System of Interstate and Defense Highways.

Other members of the Florida delegation have also introduced similar bills to provide for the inclusion of this highway link in the approved Federal Interstate System.

However, Congress has not and it is obvious that it should not consider piecemeal additions to the Interstate System.

Piecemeal additions could only produce a haphazard conglomeration of hodgepodge concrete that would relate itself only to local needs and not in any way service the original and continuing congressional determination to construct a nationwide network of technically approved interconnecting serviceable highways.

The construction of this highway between Tampa and Miami is of considerable importance to the citizens of south Florida as well as to those persons throughout Florida and the rest of the Nation who use Interstate 75 to travel along the west coast of Florida to and from Miami.

Interstate 75 now ends in Tampa. For a distance of approximately 250 miles between Tampa and Miami motorists are forced to travel on U.S. 41, which is an antiquated, narrow two-lane highway hemmed in by many bridge abutments, narrow shoulders, deep canals and marshlands of the Everglades. In other areas it wanders through the confining streets of commercial districts. This ancient two-lane highway is dangerous, congested and totally inadequate in meeting rapidly growing traffic demands.

The seriousness of the traffic safety problems involved on U.S. 41, which is one of the most heavily used highways in the Nation, has been recognized by a number of the prominent newspapers throughout Florida. The Miami Herald, the Miami News, the Sarasota Journal, and the American Automobile Association Florida Explorer are among those who have repeatedly expressed concern, forcefully recommending the construction of a large limited access highway between these urban communities.

The chambers of commerce of many States and cities also are on record as supporting the inclusion of this highway link in the Federal Interstate System.

Many municipal governments within Florida, the Florida State Highway Department, and the American Automobile Association have recommended the immediate extension of Interstate 75 southward to Miami.

The interest of other sectors of the United States is due primarily to the fact that U.S. 41 connects Miami with the Midwest and intersecting Federal highways of the Gulf and Northern States.

The Cincinnati Automobile Club is one of the more ardent supporters for the continuation of Interstate 75 into Miami.

In a letter to me dated June 3, 1963, Mr. Ralph Peters said:

As you are no doubt aware, Interstate 75 runs from Sault Ste. Marie, Mich., to Tampa. The route traverses through the very thickly populated Middle West including the territory served by the Cincinnati Automobile Club.

We are especially interested in this legislation because of the thousands of motorists from this area who visit Florida each year. Many of our more-than-80,000 members prefer to go down one coast of Florida and return via the other coast. Since Interstate 75 dead ends at Tampa, this causes an inconvenience on the part of these motorists.

In all probability the linking of Tampa and Miami would be the least costly 200 miles in the entire Interstate System.

Mr. Peters raises several valid points especially the one concerning the cost factors. A direct link between the two cities would traverse areas in which land could be procured at an extremely low cost.

Other organizations, which serve motorists who travel to Miami, have also expressed concern about the inadequate and dangerous highway facilities between Tampa and Miami.

The Nation's defense is an important factor in this proposal. There are many defense installations in south and central Florida whose primary objective is to guard the southeastern approaches to the U.S. mainland.

The highway network in central and south Florida must be adequate to facilitate the ever enlarging military and defense industry traffic. This need was highlighted during the recent Cuban crisis. The warning should be heeded without delay.

This proposed highway would link the Strategic Air Command Base in Homestead, Fla., the Key West naval and air installations and the Hawk and Hercules missile sites in Dade and Monroe Counties with the other military installations on the west coast of Florida and along the Gulf of Mexico. The extension of Interstate 75 would vastly improve the defense posture of these military installations. There is every reason to believe that military authority will readily agree.

Since 1956 when the Congress last increased the authorization under the Interstate System, a large number of defense industries have located in Tampa and Greater Miami. The most important of these industries is Aerojet General which has been contracted to build two solid-fuel rocket engines for the Air Force. Aerojet-General is now constructing, manufacturing and testing facilities which will be completed in October 1963.

Aerojet-General and the other industries in south Florida, which have been expanding rapidly during the last 5 or 6 years, need a dependable and rapid transportation network. The continuation of Interstate 75 between Tampa and Miami would greatly facilitate the operation of these industries and the Nation's defense effort.

The Dade County Redlands agricultural area which supplies a large part of the Nation's vegetable and fruit market is dependent on adequate highways to transport fresh produce to the rest of the Nation. Truck farms cannot operate efficiently without an adequate and easily accessible transportation network. Construction of this highway would accelerate and insure a steady flow of fruits and vegetables from the Redlands area to all points of the South, North, and Midwestern States.

I am sure my colleagues here today are aware of somewhat similar highway needs in their districts and States. This Congress should recognize this need and give early and serious consideration to a sizeable increase in the authorized mileage in the national system of interstate and defense highways.

A resolution has been introduced in the House—and another in the Senate—calling for studies of the Nation's present and future highway needs. I have cosponsored this legislation and urge this House to give these resolutions serious thought for an expeditious enactment. There is a need in Florida and many other States for additional highways, and this proposed study is the first realistic step this Congress can take in alleviating this need.

FAILURE TO EXTEND PUBLIC LAW 78, THE BRACERO PROGRAM

(Mr. GUBSER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GUBSER. Mr. Speaker, when this House recently refused to extend Public Law 78 I am confident that many Members who voted against the bill did not realize the serious chain reaction which was set in motion. Already it is evident that the farmers themselves were not the only persons to be hurt by the termination of the bracero program. As each day passes I receive more letters from small businessmen and the employers of industrial-type labor, including many union members.

I submit herewith a letter from a small businessman in the farming community of Watsonville, Calif.:

WATSONVILLE, CALIF.,
June 17, 1963.

HON. CHARLES S. GUBSER,
House Office Building,
Washington, D.C.

DEAR SIR: I am a small businessman engaged in the sale of agricultural supplies. Since the defeat of the extension of Public Law 78 I have received cancellation on future business to the extent of about \$50,000.

During the harvest season my supply business provides work for approximately 30 people. I would estimate that next year this number will be cut in half. Incidentally the type of people I hire are not agriculture-type labor.

A car dealer friend of mine told me he had a cancellation on two trucks to a berry grower. If you wanted to trace this through, it even affects General Motors, though in a small way, that I'm sure General Motors can survive without Public Law 78.

I could go on and on explaining how in my opinion and those I have talked to, how the termination of Public Law 78 will affect the economy of this community.

Mr. GUBSER, I strongly feel that this bill should be reintroduced and that Public Law 78 be extended for a minimum of at least 2 years. During this 2 years a determination could be made to find out if there is sufficient domestic workers of the "stoop labor" class to handle the harvest of crops in California. If it develops that there is not enough domestic help then Public Law 78 could be extended beyond 1965.

Again, may I urge you to vigorously support this measure that so affects the economy of this and other districts of California.

Sincerely,

EDWARD A. SILVA.

COMMITTEE ON THE CAPTIVE NATIONS

(Mr. DERWINSKI (at the request of Mr. LANGEN) was given permission to extend his remarks at this point in the Record and to include extraneous matter.)

Mr. DERWINSKI. Mr. Speaker, many Members of the House have united in a bipartisan effort to establish a special Committee on the Captive Nations. At the present time there are over 40 individual resolutions pending before the Committee on Rules, and our distinguished colleague from Pennsylvania [Mr. Flood] and I have requested an early hearing on these proposals.

The Soviet oppression of millions of previously free people behind the prison walls of the Iron Curtain continues a great weakness of the Soviet Union. It is unfortunate that this fact has been either ignored or disregarded by State Department officials in their analysis of conditions behind the Iron Curtain. In order to emphasize the weakness of the Soviet empire, brought about by the continued nationalistic spirit of the oppressed peoples of communism, I wish to direct to the attention of the Members a number of items which dramatize this fact.

The first is an article by C. L. Sulzberger in the June 5 edition of the New York Times, which describes racism in the Communist orbit, which I make a part of my remarks at this point:

RACISM IN THE COMMUNIST ORBIT

(By C. L. Sulzberger)

The racial issue in the United States casts an inevitable shadow over our foreign policy by making it unquestionably more difficult to spread concepts of freedom and democracy among newly independent lands in Africa and Asia.

This problem is increasingly understood by thoughtful Americans. They recognize the embarrassment caused as we seek to develop such oversea friendships when excruciating incidents accompany the long-delayed implementation of equal rights in the United States. And even if this awareness produces no easy answers, the mere fact of its existence is of some help.

A less obvious aspect of the racial revolution that accompanies this era's national and social revolutions is its impact on the Communist orbit. However, the argument about "color" and its implications in terms of classical Marxist concepts of imperialism is

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF
BUDGET AND FINANCE

(For information only;
should not be quoted
or cited)

Issued October 30, 1963
For actions of October 29, 1963
88th-1st: No. 173

CONTENTS

Administrative procedure.3	Foreign relations.....5	Minerals.....26
Agriculture development..1	Foreign trade.....4,21	Patents.....22
Air pollution.....9	Forests.....8	Personnel.....32
Area redevelopment.....18	Future farmers.....19	Potatoes.....30
Civil rights.....16	Grain.....27	Public works.....7,24
Coffee.....11	Humane treatment.....25	Recreation.....8,33
Electrification.....13	Information.....12,28	Rice allotments.....29
Farm labor.....15	Legislative program.....10	Textiles.....23
Feed grains.....12	Library services.....2,28	Transportation.....27
Foreign aid.....1,17,20	Manpower.....31	Unemployment.....24
		Vocational education...14
		Water resources.....7
		Water rights.....6
		Wheat.....21

HIGHLIGHTS: Senate debated foreign aid authorization bill. Sen. Hart urged review of trade policies with Communist nations. Sen. Fulbright inserted Dean Acheson address on problems of agricultural trade with Common Market. Sen. Kuchel inserted Sen. Jordan's address on Federal-State water rights controversy. Sen. Randolph urged expansion of water resource development projects. House Rules Committee cleared bill to implement International Coffee Agreement. Rep. Barry inserted article charging USDA delay in providing information on shipping payments and feed grain allotments.

SENATE

1. FOREIGN AID. Continued debate on H. R. 7885, the foreign aid authorization bill (pp. 19432-3, 19434-42, 19452-80, 19483-4). Sen. Humphrey urged continued aid to Latin American countries under the Alliance for Progress, particularly in the field of agricultural development (pp. 19452-73). Several Senators submitted amendments intended to be proposed to this bill (p. 19414).
2. LIBRARY SERVICES. The Labor and Public Welfare Committee reported an original bill S. 2265, to amend the Library Services Act in order to increase the amount of assistance under the Act and to extend such assistance to nonrural areas (S. Rept. 592). p. 19413
3. ADMINISTRATIVE PROCEDURE. The Judiciary Committee reported with amendments S. 1664, to provide for continuous improvement of the administrative procedure of Federal agencies by creating an Administrative Conference of the United States (S. Rept. 621). p. 19413

4. FOREIGN TRADE. Sen. Hart renewed his suggestion for "a high level, broad re-examination of our trade policies with the Communist-bloc countries," commended the announcement of the Senate Foreign Relations Committee that it would undertake such a review, and inserted an editorial in support of his position. pp. 19442-3
5. FOREIGN RELATIONS. Sen. Fulbright reviewed and expressed concern over "the attitude of the French toward the Western Alliance," and inserted an address by Dean Acheson reviewing relations between the U.S. and Western Europe, including the current problems of agricultural trade with the European Common Market. pp. 19484-9
Sen. Proxmire inserted an editorial commending the work of Secretary of State Rusk, particularly for his "job of bringing a unified policy from the diverse attitudes of the Defense Department, the Agriculture Department, the Treasury Department, the CIA, the Federal Reserve, and so forth, with reference to our troop commitments abroad." pp. 19415-7
6. WATER RIGHTS. Sen. Kuchel inserted an address by Sen. Jordan (Ida.) before the annual convention of the National Reclamation Association supporting enactment of legislation "toward solving the Federal-State jurisdictional question in the field of water." pp. 19421-5
7. WATER RESOURCES. Sen. Randolph urged enactment of legislation for expansion of water resource development projects, including public works acceleration, flood control, and river basin projects. pp. 19451-2
8. RECREATION. Sen. Symington commended the appointment of George B. Herzog, Jr., to be the next head of the National Park Service, stating that he was particularly suited to oversee the development of the Ozark National Rivers recreation area in Mo., which would include certain national forest lands. pp. 19450-1
9. AIR POLLUTION. Sen. Fong was added as a cosponsor of S. 432, to extend and expand the Federal air pollution control program. p. 19414
10. LEGISLATIVE PROGRAM. Sen. Mansfield announced that it is anticipated the Senate will remain in session for the remainder of this year, and will go over from Fri., Nov. 8, to Tues., Nov. 12, from Wed., Nov. 27, to Fri., Nov. 29, and from Fri., Nov. 29, to Tues., Dec. 3, and then it is anticipated that it will stand in recess or will operate on a 3-day adjournment basis between Fri., Dec. 20, and Thurs., Jan. 2, and will convene the opening of the 2nd session of this Congress on Jan. 3. p. 19483

HOUSE

11. COFFEE. The Rules Committee reported a resolution for the consideration of H.R. 8864, to carry out U.S. obligations under the International Coffee Agreement of 1962. p. 19411
12. INFORMATION; FEED GRAINS. Rep. Barry inserted an article charging that USDA delayed in providing unclassified information on Federal payments to a Greek-owned shipping company and a corn-acreage allotment reduction under the feed grains program. p. 19402

PROVIDING FOR CONTINUOUS IMPROVEMENT OF THE ADMINISTRATIVE PROCEDURE OF FEDERAL AGENCIES BY CREATING AN ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

OCTOBER 29 (legislative day, OCTOBER 22), 1963.—Ordered to be printed

Mr. LONG of Missouri, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1664]

The Committee on the Judiciary, to which was referred the bill (S. 1664) to establish a permanent Administrative Conference of the United States, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

AMENDMENTS

Amendment No. 1: On page 2, lines 5 through 8, strike all of subsection (c) and reletter the succeeding subsections of section 2.

Amendment No. 2: On page 3, strike all of lines 8 through 20 and insert in lieu thereof—

private persons through rulemaking, adjudication, licensing or investigation, as those terms are used in the Administrative Procedure Act (5 U.S.C. 1001-1011).

Amendment No. 3: On page 3, strike all of lines 21 through 24 and insert in lieu thereof—

(b) "Administrative Agency" means any authority as defined by section 2(a)g of the Administrative Procedure Act (5 U.S.C. 1001(a)).

Amendment No. 3(a): On page 4, line 14, strike the word "preponderantly", and page 4, line 15, strike the words "Federal officials and personnel, including".

Amendment No. 4: On page 4, line 24, before the semicolon add the words "or a person designated by such board or commission".

2 CREATING AN ADMINISTRATIVE CONFERENCE OF THE U.S.

Amendment No. 5: On page 5, line 2, before the semicolon add the words “, or a person designated by such head of a department or agency”.

Amendment No. 6: On page 5, line 3, strike the words “an appointee” and insert in lieu thereof “one or more appointees”.

Amendment No. 7: On page 5, line 12, strike the word “adequate” and insert in lieu thereof “full”.

Amendment No. 8: Beginning on page 5, line 21, and continuing on page 6, lines 1 and 2, strike all of subsection (c) and reletter subsection (d).

Amendment No. 9: On page 6, line 22, after the word “collect”, add “information and statistics”; and on page 6, line 23, strike the words “of operating statistics”.

Amendment No. 10: On page 7, lines 20 through 21, strike “preponderantly of Federal officials and personnel. The Council shall consist”.

Amendment No. 11: On page 8, line 5, before the semicolon add “and it shall call at least one plenary session each year”.

Amendment No. 12: On page 8, line 22, strike the word “preliminary”.

Amendment No. 13: On page 9, lines 7 and 8, strike the words “or agency regulations”.

Amendment No. 14: On page 10, line 9, before the period add—

; such reports shall set forth the compliance of the agencies with the recommendations of the Conference.

Amendment No. 15: On page 5, line 6, strike “Chairman” and insert in lieu thereof “head of such board or commission”.

Amendment No. 16: On page 10, after line 13, add the following new subsection (e):

(e) Each member of the Conference shall participate in his individual capacity and not as a representative of any governmental or nongovernmental organization. Members of the Conference who are not regular Federal officials or personnel shall be special Government employees for the purposes of sections 203, 205, 207, 208, and 209 of title 18, United States Code.

PURPOSE OF THE AMENDMENTS

Amendment No. 1 eliminates a general and broad finding which seems out of place in this legislation.

Amendments Nos. 2 and 3 make the jurisdiction of the Conference coextensive with that of the Administrative Procedure Act itself. With one exception, the witnesses on the legislation favored broadening the jurisdiction of the Conference and eliminating the exceptions placed in section 3(a). As the Conference's powers will be strictly limited to recommendations, it would appear advantageous to expand the scope of its inquiries and broaden its jurisdiction to include the study of all problems arising out of the Administrative Procedure Act. It was pointed out, *inter alia*, that many of the most valuable studies and recommendations of the recent successful Administrative Conference could never have been made if that Conference's jurisdiction had been as limited as proposed in S. 1664, as introduced.

Amendment No. 3(a) was adopted because the committee believed that the language to be struck was both vague and superfluous. In the committee's view, the ratio of Government personnel to non-Government personnel in the temporary Conference was a good one and should be a reasonable target for the ratio in the permanent Conference. In any event, the ratio should be left to the presidentially appointed Chairman and the Council.

Amendments Nos. 4 and 5 are designed to eliminate the existence of ex-officio members of the Conference and assure that all members have the time and inclination to participate fully in the work of the Conference. It is hoped that the chairmen of the boards and commissions and the heads of departments and agencies will decide that they have the time and inclination to participate in the work of the Conference; their active participation will add to the value and prestige of the Conference. However, in such cases where an agency head does not feel that he can make a full and continuing contribution, he should be replaced by a person who can participate fully and on a continuing basis. Much value of the Conference will lie in its continuing nature.

Amendment No. 6 is a perfecting amendment, making it possible for the Council to authorize participation of more than one additional appointee from a particular board, commission, department, or agency if the particular circumstances warrant.

Amendment No. 7 is designed to underscore the importance of nonagency participation in the Conference. The viewpoints of private citizens should not have only adequate representation, but, rather, should have full representation. It is essential that sufficient non-agency persons be appointed by the Chairman to make possible effective representation on each organ and suborgan of the Conference. The committee believes that the ratio between agency and nonagency personnel during the recent temporary Conference would be a good target for such ratio.

Amendment No. 8 would eliminate alternate membership. This is a companion amendment to Nos. 4 and 5, all designed to assure full and continuous participation by the members. With one exception, all of the witnesses on the legislation favored such an arrangement.

Amendment No. 9 is a perfecting amendment to broaden the material which could be collected and published by the Conference.

Amendment No. 10 would eliminate a restriction on the President in naming the members of the Council. It is believed that the President should have as much flexibility as possible in providing for the most effective group of Council members. It is likely that Federal officials and personnel will be in the majority on the Council at most times—although this was not always true on the last Conference, but we believe this should be left to the discretion of the President at any particular time.

Amendment No. 11 would assure an annual meeting of the Assembly and guard against inadvertent weakening of the Conference by sins of omission.

Amendment No. 12 would remove a vague restriction upon the Chairman's power to initiate studies he deems important for the Conference's consideration. The testimony before the committee indicates that the word "preliminary" adds little or nothing to the legislation and might be the source of considerable needless debate later.

Amendment No. 13 would narrow the grounds upon which information could be withheld from the Conference. If the amendment is adopted, withholding can only be done upon statutory authority or regulations pursuant thereto. We believe that the Conference should be able to obtain information as widely as possible.

Amendment No. 14 would assure that the annual reports indicate the extent to which the agencies are implementing Conference recommendations. This would appear to be a concomitant ingredient to successful functioning of the Conference.

Amendment No. 15 is designed to correct a drafting defect.

Amendment No. 16 has a dual purpose. The first sentence will assure independence of expression on the part of the members of the Conference. The second sentence is designed to obviate any possible misapplication of the conflict of interest statutes; it does not create any exemption from such statutes, but assures that members of the Conference who are not regular Federal officials or employees will be subject only to those provisions of the statutes which apply to "special Government employees."

PURPOSE

The purpose of the legislation, as amended, is to provide permanent machinery whereby the myriad Federal administrative agencies can, with the active assistance of outside authorities on administrative practices, formulate recommendations to improve their own procedures. The basic objective of the Administrative Conference will be to cut down on the time and cost of administrative procedures and, at the same time, to preserve the necessary elements of due process of law.

PROVISIONS OF BILL

S. 1664 would establish a permanent Administrative Conference of the United States. It would consist of a Chairman, Council, and Assembly.

The Chairman of the Conference would be full time, appointed by the President for 5 years, by and with the advice and consent of the Senate.

The Conference would have an 11-man Council, consisting of the Chairman and 10 members appointed by the President for 3-year terms.

The main body of the Conference would be the Assembly, consisting of the Chairman, the Council, and a flexible number of members to be selected by several means. The membership would include the Chairman of each regulatory agency (or a person designated by such agency) and the head of each executive department or other administrative agency designated by the President (or a person designated by the head of such department or agency). It would also contain other appropriate persons; these would include other knowledgeable agency personnel, but it would also include nonagency personnel—

in such number as will assure full representation of the viewpoints of private citizens and the utilization of diverse experience.

The latter shall include—

members of the practicing bar, scholars in the field of administrative law or government, or others especially informed by

knowledge and experience with respect to Federal administrative procedure.

As amended, the jurisdiction of the Conference would be coextensive with that of the Administrative Procedure Act (5 U.S.C. 1001-1011).

The Assembly of the Conference would be required to meet at least once annually.

The basic powers of the Conference would be to study problems and make recommendations. It would have no power whatever to enforce such recommendations. All of the witnesses agreed that newspaper descriptions of a "superagency" could not be more inaccurate.

PARALLEL TO JUDICIAL CONFERENCE

It should be noted that the idea of our Administrative Conference originated with the Judicial Conference of the United States; and, furthermore, the Administrative Conference would stand in a similar relationship to the administrative agencies as the Judicial Conference stands to the Federal court system. If it were half as successful in improving administrative procedures as the Judicial Conference has been in court procedures, it would be very worthwhile.

To evidence the continuing interest in establishment of a permanent Administrative Conference, the Chairman of the Judicial Conference, Chief Justice Earl Warren, wrote the following letter to Senator Edward V. Long:

SUPREME COURT OF THE UNITED STATES,
Washington, D.C., June 11, 1963.

HON. EDWARD V. LONG,
*Chairman, Subcommittee on Administrative Practice and Procedure,
Committee on the Judiciary, U.S. Senate, Washington, D.C.*

MY DEAR SENATOR LONG: This is in response to your letter of yesterday requesting my views concerning S. 1664, which would establish a permanent Administrative Conference.

I am pleased to report that the Conference and I personally endorse heartily the purposes of S. 1664. It is our considered opinion that the need for an Administrative Conference is much the same as that which called for the establishment of the Judicial Conference, and we believe that it could accomplish for the administrative agencies what ours is accomplishing for the Federal judiciary.

The Judicial Conference has long been interested in the efforts to establish such a permanent Conference and has received and considered reports of Judge Prettyman's committee since 1954. In 1959 and 1960, it adopted resolutions recommending the establishment of a permanent Commission. This was transmitted to the President with my personal endorsement on May 6, 1960.

The interest manifested in those resolutions continues, and I feel that such a Conference could, in addition to expediting the business of its own agencies, also better coordinate their activities with those of the courts.

With best wishes, I am,
Sincerely,

(S) EARL WARREN.

HISTORY OF ADMINISTRATIVE CONFERENCE

A complete history of the idea of an Administrative Conference of the United States is set forth in an appendix to this report. Very briefly, however, the history is as follows:

With the expansion in the number and power of regulatory and administrative agencies, especially in the 1930's and 1940's, pressure to improve their procedures and practices grew. One result was the important Administrative Procedure Act of 1946.

Yet, as the agencies expanded and touched more and more of the Nation's economic life, and as the time and cost of proceedings increased, pressure continued to mount for machinery to study problems of administrative procedures. The pressure came from the public, the bar, the agencies themselves and from other public spirited groups.

As a result, President Eisenhower established a temporary Administrative Conference in 1954-55; it produced many worthwhile recommendations; however, many of these recommendations were never implemented.

President Kennedy established a second temporary Conference in 1961-62. It, too, produced a number of very useful recommendations, a number of which have been adopted by several agencies. One of its strongest recommendations was for the establishment of a *permanent* Administrative Conference of the United States. It was this recommendation to the President that prompted the Bureau of the Budget to draft S. 1664 and to suggest its introduction to Senator Long, chairman of the Senate Subcommittee on Administrative Practice and Procedure.

ADVANTAGES OF CONTINUITY

The single strongest argument in favor of a permanent Conference is that of continuity. The past temporary Conferences have done excellent work, but they have been limited in achievement by their temporary nature. Of necessity, they have spent much of their allotted time in getting organized. Each time they have begun, more or less, from scratch. They have had no way in which to follow up, modify, or expand their recommendations.

In short, they have been greatly hampered by their temporary existence and their handicap has been deplored by the agencies, by both political parties, by both temporary Conferences, by the second Hoover Commission, by the bar—by virtually everyone connected with administrative procedures.

WIDE SUPPORT FOR LEGISLATION

The idea of a permanent Administrative Conference, along the lines of S. 1664, was widely supported in the hearings held on June 12, 13, and 14, 1963.

The bill was drafted by the Bureau of the Budget and supported in the hearings by the Bureau's Deputy Director, Mr. Elmer B. Staats.

It is believed that the Conference has the *unanimous* support of the regulatory agencies. Representatives of a number of these agencies testified in the strongest terms in favor of the legislation; the

formal comments of a number of agencies are attached to this report. The following letter, signed by the Chairmen of the "big seven" agencies, was received by Senator Long:

JUNE 10, 1963.

HON. EDWARD V. LONG,
*Chairman, Subcommittee on Administrative Practice and Procedure of
 the Committee on the Judiciary, U.S. Senate, Washington, D.C.*

DEAR SENATOR LONG: Although our agencies will send their comments on S. 1664 in due course, before the hearings are held on this bill we wished you to know that we individually and collectively favor the establishment of a permanent Administrative Conference at the earliest practicable date.

Sincerely yours,

(Signed) ALAN S. BOYD,
Chairman, Civil Aeronautics Board.

(Signed) E. WILLIAM HENRY,
Chairman, Federal Communications Commission.

(Signed) JOSEPH C. SWIDLER,¹
Chairman, Federal Power Commission.

(Signed) PAUL R. DIXON,
Chairman, Federal Trade Commission.

(Signed) LAURENCE K. WALRATH,
Chairman, Interstate Commerce Commission.

(Signed) FRANK W. McCULLOCH,
Chairman, National Labor Relations Board.

(Signed) WILLIAM L. CARY,
Chairman, Securities and Exchange Commission.

The idea of a permanent Conference has the strong support of the American Bar Association, the Federal Bar Association, and a number of other very prominent legal groups.

NONPARTISAN NATURE OF PROJECT

It should be stressed that establishment of the Conference is utterly nonpartisan. The Eisenhower administration worked very hard and effectively to establish a temporary Conference and to improve administrative procedures. The Honorable Herbert Brownell, Attorney General under President Eisenhower, testified very strongly for the bill and said that he could think of no project that was "less partisan." The Honorable J. Lee Rankin, Solicitor General under President Eisenhower, wrote a strong letter favoring the legislation. And, of course, there is the support of Chief Justice Warren. (See p. 5.)

VERY MODEST COST

It has been estimated that the total cost of the Conference will be between one-quarter and one-half million dollars a year. It is the opinion of this committee that the Conference will return this cost many, many times over in savings to the taxpayers, through savings to the administrative agencies and directly to the public with business before them.

¹ Mr. Swidler's note: My endorsement is based on the assumption that the Administrative Conference is established along the lines proposed in S. 1664. J. C. S.

RECOMMENDATION

For these reasons the Committee on the Judiciary recommends that the bill (S. 1664), as amended, do pass.

Attached hereto and made a part hereof are reports submitted to the subcommittee by various agencies.

U.S. ATOMIC ENERGY COMMISSION,
Washington D.C., July 8, 1963.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate.

DEAR SENATOR EASTLAND: This is in response to your request of June 10, 1963, for a report on S. 1664, a bill to provide for continuous improvement of the administrative procedure of Federal agencies by creating an Administrative Conference of the United States, and for other purposes.

As we understand the bill, it would establish an Administrative Conference of the United States, composed of a Chairman appointed by the President with the advice and consent of the Senate, the chairman of each independent, regulatory board or commission, certain other Federal officials, persons appointed by the President and others, for the purpose of studying Federal administrative agencies' procedures, making recommendations to such agencies and to the President, the Congress or the Judicial Conference of the United States, and compiling and publishing reports of operating statistics as may be deemed useful in evaluating and improving the administrative process.

The Atomic Energy Commission is in full accord with the intent and purpose of S. 1664, and recommends its enactment.

As our only comment on the language of S. 1664, we suggest that in the interest of clarity section 6(c)(3) be revised to provide that requested information be supplied by agency heads to the extent "permitted by law and agency regulation." The language of the proposed section 6(c)(3), which provides that information shall be supplied to the extent "permitted by law or agency regulation," might present difficulties in actual operation, since it might be read as authorizing in general terms agency regulations permitting disclosure notwithstanding possible incompatibility of such regulations with legal requirements as to protection of classified information and other confidential material. This point might in the alternative be dealt with by modifying the language to read: "except to the extent prohibited by law or agency regulation."

The Bureau of the Budget has advised that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely yours,

(Signed) GLENN T. SEABORG,
Chairman.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
Washington, D.C., July 8, 1963.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request of June 10, 1963, for a report on S. 1664, a bill to provide for continuous improvement of the administrative procedure of Federal agencies by creating an Administrative Conference of the United States, and for other purposes.

This bill would put the Administrative Conference of the United States (created by Executive Order 10934) on a statutory basis and make it permanent.

We recommend enactment of this bill.

We are advised by the Bureau of the Budget that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely,

(S) ANTHONY J. CELEBREZZE,
Secretary.

DEPARTMENT OF THE TREASURY,
Washington, D.C., June 12, 1963.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Department on S. 1664, to provide for continuous improvement of the administrative procedure of Federal agencies by creating an Administrative Conference of the United States, and for other purposes.

The Department believes it would be desirable to establish a permanent Administrative Conference of the United States and consequently favors the enactment of the proposed legislation. However, the Department recommends that the words "and the availability of funds" be added at the end of clause (3) of section 6(c) of the bill. The compilation of information necessarily entails the use of manpower and the Department feels that compliance with requests for information should be limited in terms of the availability of staff and budget.

The Department has been advised by the Bureau of the Budget that there is no objection from the standpoint of the administration's program to the submission of this report to your committee.

Sincerely yours,

(Signed) FRED B. SMITH,
Acting General Counsel.

INTERSTATE COMMERCE COMMISSION,
Washington, D.C., June 12, 1963.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR CHAIRMAN EASTLAND: This is in response to your letter of June 10, 1963, requesting comments on a bill, S. 1664, introduced by Senator Long of Missouri, to provide for continuous improvement of the administrative procedure of Federal agencies by creating an Administrative Conference of the United States, and for other purposes. This matter has been considered by the Commission and I am authorized to submit the following comments in its behalf:

In principle, we agree with the bill's overall objective to establish a continuing Administrative Conference of the United States. Accordingly, our comments will be confined to particular provisions therein which, in our opinion, appear either unclear or otherwise unsatisfactory.

At the outset, we wish to register our specific approval of section 4(b) which provides that the "Conference shall be composed preponderantly of Federal officials and personnel" and of a similar provision in section 6(b) relating to Council membership. Otherwise, there always would be the possibility that outside interests could dominate operations and recommendations. So conditioned, however, we believe that the broad grant of jurisdiction conferred in the bill would enable the Conference to carry out its intended mission.

Section 6(a) vests in the Conference Assembly ultimate authority over all activities of the Conference. We assume that the authority conferred upon the Chairman by paragraph (c) of that section would be effectively controlled by the Conference Assembly. If there is any doubt as to the validity of that assumption, we believe that subsections (c)(1), (c)(2), and (c)(3) should be amended by limiting in certain respects the Chairman's power and discretion.

We assume that the committee will be advised by the Department of Justice whether the nongovernmental members of the Conference will need an exemption from the conflict of interest laws.

Subject to the foregoing comments and qualifications, we favor enactment of the bill.

Sincerely yours,

(S) LAURENCE K. WALRATH,
Chairman.

DEPARTMENT OF COMMERCE,
MARITIME ADMINISTRATION,
OFFICE OF THE ADMINISTRATOR,
Washington, D.C., July 2, 1963.

HON. EDWARD V. LONG,
Chairman, Senate Judiciary Subcommittee on Administrative Practice and Procedure, Washington, D.C.

DEAR SENATOR LONG: Allow me to congratulate you upon your designation as chairman of the Senate Subcommittee on Administrative Practice and Procedure. This subcommittee has a most important function in overseeing the operations of the several regulatory and promotional agencies which employ formal administrative procedures and I am happy that the chairmanship is in your good hands.

As you are undoubtedly aware, statutory hearings are conducted before the agency in three specific areas: (1) Applications by steamship companies for operating-differential subsidy to permit competition with foreign carriers on a vessel operating cost parity pursuant to section 605(c) of the Merchant Marine Act of 1936, as amended; (2) applications by subsidized carriers to enter the protected domestic, coastwise, or intercoastal trades pursuant to section 805(a) of the act; and (3) applications by lumber shippers desiring to use foreign flag vessels between ports in the United States and Puerto Rico pursuant to Public Law 87-877. Occasionally nonstatutory hearings are being held pursuant to discretionary authority. These concern applications for so-called title XI shipbuilding mortgage insurance and appeals from decisions of the Maritime Administration contracting officer in disputes arising under shipbuilding contracts.

We have a staff of two hearing examiners and six attorneys who, as required, act as public counsel in the processing of formal proceedings. The chief hearing examiner, Mr. Paul N. Pfeiffer, who is also the current president of the Federal Trial Examiners Conference, and the Assistant General Counsel, Division of Operating Subsidy Contracts, Mr. Louis Zimmet, would be happy to discuss any problems on administrative procedure with your Mr. Fensterwald at his convenience.

The Maritime Administration has been greatly impressed by the work of the Administrative Conference in producing numerous carefully considered and well-documented reports on the subjects of licensing, rulemaking, contract appeals, functions of hearing examiners and public or staff counsel. It would appear that the reestablishment of the Administrative Conference on a permanent basis would be a desirable step in developing further improvements in the technique of administrative adjudication. The cross-fertilization of ideas stemming from an expert body composed of Government lawyers and hearing examiners, private practitioners, and law professors should serve as a catalytic agent toward the attainment of this important goal.

With renewed congratulations and best wishes for the success of your subcommittee.

Sincerely yours,

DONALD W. ALEXANDER,
Maritime Administrator.

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., June 12, 1963.

HON. EDWARD V. LONG,

*Chairman, Subcommittee on Administrative Practice and Procedure,
Committee on the Judiciary, U.S. Senate, Washington, D.C.*

DEAR SENATOR LONG: The Commission would like to take this opportunity to endorse enactment of S. 1664, a bill to provide for continuous improvement of the administrative procedure of Federal agencies by creating an Administrative Conference of the United States. Enactment of this legislation would provide the “* * * means by which agencies in the Federal Government may cooperatively, continuously, and critically examine their administrative processes and related organizational problems,” as recommended by the Honorable E. Barrett Prettyman in his letter of December 17, 1962, transmitting

to the President the final report of the interim Administrative Conference of the United States.

The Commission fully supports establishment of the Administrative Conference on a permanent basis. We believe that the continuing study of procedural problems common to all Federal agencies in light of the need for maximum efficiency on the part of the Government, and of the necessity for affording fairness to those affected by Governmental action—will do much to improve administrative practices.

In supporting this legislation, we note with approval several distinctive aspects of S. 1664—the high degree of autonomy of the proposed Conference, specific exclusion of the Conference from matters of substantive policy committed by law to agency discretion, and the formulation of recommended new standards of practice through mutual cooperation and only after agency-members of the Conference have been afforded an opportunity to assess the effect of such standards on their operation. We believe that these features of the bill strike a sensible balance between the divergent needs of agencies to tailor their procedures to particular operational problems and the admitted need for some means by which procedural problems can be continuously appraised and approved.

By direction of the Commission:

E. WILLIAM HENRY, *Chairman.*

FEDERAL POWER COMMISSION,
Washington, June 12, 1963.

Re S. 1664, 88th Congress, a bill to create an Administrative Conference of the United States.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: In response to your June 10 request for our views on S. 1664, we are wholeheartedly in favor of the creation of a permanent organization to improve administrative procedures. The participation of the Commission in the recently concluded Conference has aided our own efforts to revitalize our procedures. The investigations of those procedures made by the various committees of the Conference pointed up areas in which improvements were shown to be desirable and they have been adopted. The Conference also provided a forum in which procedural innovations made by one agency were evaluated and brought to the attention of other agencies; and we were gratified that some of the FPC's recent procedural reforms were recommended by the Conference for adoption by other agencies. We expect that similar studies and information would be of value in the future.

The Conference can be of considerable assistance to the executive branch and to the committees of Congress by providing a knowledgeable and impartial body to suggest and evaluate proposals for administrative improvement.

The bill, correctly, we believe, provides for a Conference without authority to direct agency action. Every agency has its own responsibilities and, as such, should be the judge of its own procedures. We think it would be a mistake to dilute the responsibility of an adminis-

trative agency for improving the dispatch of its business. This will follow the pattern of the Judicial Conference which has no power to direct action but whose recommendations to the President, the Supreme Court, and the Congress have resulted in an improvement of the judicial process. We believe an Administrative Conference established in accordance with the provisions of the bill should in time attain the stature of the Judicial Conference.

Sincerely,

(Signed) JOSEPH C. SWIDLER,
Chairman.

FEDERAL AVIATION AGENCY,
Washington, D.C., August 22, 1963.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request for comments on S. 1664, a bill to provide for continuous improvement of the administrative procedure of Federal agencies by creating an Administrative Conference of the United States, and for other purposes.

We are in favor of this bill subject to the modifications discussed below. Those modifications, which relate solely to the question of the proper scope of the Conference's activities, rest on the assumption that the remaining portions of the bill concerning Conference membership, organization, and procedure will remain as written. If changes are made in these areas, especially in the structure of Conference membership, our suggestions for broadening the scope of the Conference would have to be reconsidered.

As an agency represented on the last Administrative Conference, we are impressed with the need for a permanent forum for the analysis and discussion of the problems of administrative procedure. We believe the record made by the last Conference more than justifies the continuation of such an institution on a permanent basis. Thus, we are fully in accord with the recommendations as to future organization made by that Conference.

The major difference between S. 1664 and the recommendation of the last Conference lies in the limitation on the scope of the proposed Conference which is imposed by section 3(a) of the bill. The Conference recommended that the new organization "should have power to inaugurate and conduct studies of any phase of any agency's procedures, giving 'procedures' in this context the broadest meaning." This recommendation would leave with the Chairman and Council considerable discretion in the selection of appropriate matters for study.

S. 1664 defines more narrowly the kinds of administrative activities which could be studied by the Conference. The effect of section 3(a)(1) is to preclude the study of any administrative procedure in the areas of military and foreign affairs, agency management, personnel, public property, loans, grants, benefits, or contracts, except where such proceedings take the form of hearings under sections 7 and 8 of the Administrative Procedure Act, or where they result in the imposition of penalties on private persons. Section 3(a)(2) goes on to exclude administrative procedures which are subject to later trial de

novo in any court, which rest on inspections tests or elections, or which involve the certification of employee representatives.

While we are sympathetic with the desire to define in some way the intended scope of the Conference, and while we recognize that some of the subject matter areas listed above will present few if any questions of appropriate concern to a Conference of this kind, we believe the limitations imposed by section 3(a) go too far.

As a matter of principle, we believe the Administrative Conference should be free to examine any agency procedures which determine or affect the rights, privileges, status, or obligations of individuals, inside or outside the Government. The limitations of section 3(a) of S. 1664 have the effect of removing from Conference consideration many procedures of this kind. Of special importance to this Agency, for example, are the exclusions of formal contract appeal and personnel grievance procedures.

We understand the language of section 3(a) is intended to limit the Conference to consideration of those matters in which lawyers have traditionally been involved. There may be some question whether this is an adequately discriminating standard. In any event, the involvement of lawyers in a procedure—like any of the other indicia that an activity has become a proper subject of administrative law—is a function of many things, including the prevailing policies of the agency, the nature of the rights or obligations being determined, and the shifting patterns of judicial response to questions of statutory and constitutional interpretation. None of these matters is easily determinable in advance. Whatever the validity of the criterion of lawyer involvement, therefore, we do not believe it or any similar standard can be implemented by language in the bill itself. In our view, the administrative process is too diverse and changeable, the judiciary too dynamic and inventive, to permit final judgments about what topics the Nation's administrative law experts might profitably study. The question of appropriate limits on the Conference should be left to the judgment and discretion of the Chairman and Council, under only general statutory standards. A standard consistent with the principle stated in the last paragraph, and interpreted with due regard to accepted internal agency prerogatives, by a Conference made up predominantly of agency heads would, we believe, confine the Conference to its appropriate sphere without limiting the contribution it might make to the mechanism of agency self-improvement in the broad area of administrative law.

If further statutory limitations on the scope of the Conference are nevertheless considered desirable, we believe they should be cast in terms of the degree of procedural formality involved rather than, as is the case in the instant bill, the subject matter of the proceeding, its statutory basis, the form of sanction to be imposed, the status of the parties, or the possibility of later review. This could be accomplished by revising the exception in section 3(a) (lines 12 through 20, p. 3) to read as follows: "any function or matter specified in section 4 (1) or (2) or section 5 (3), (5), or (6) of the Act except to the extent that such function or matter consists of proceedings conducted pursuant to or in substantial conformity with section 7 of the Act."

Such a provision would leave within the scope of the Conference most agency determinations of individual rights and obligations which are made through formal proceedings of the kind described in section 7 of the Administrative Procedure Act, whether or not those

proceedings are technically required to be conducted under that section. Contract appeal procedures and personnel grievance procedures could be examined, for instance, when (and only when) they were conducted through formal "on the record" hearings. No reason is apparent for depriving the Nation's administrative law experts of the opportunity to study and comment on the adequacy of such formal procedures.

It has been suggested that the availability in some of these areas of later administrative or judicial review—such as that available to a contractor suing in the Court of Claims—insures the adequacy of the ultimate decision, and that study of the underlying agency procedures is therefore unnecessary. We do not agree. Full review of a given case may insure that justice is ultimately done in that case. It does not, however, go to the question of whether the agency procedures involved are well designed to produce fair, equitable, and timely determinations of the rights at stake. Where improvements at this level are possible we believe they are important and should be within the ambit of Conference study. We note, for example, that even though a contractor's case may be tried *de novo* in the Court of Claims, the feeling that an early and just determination is in the interest of all the parties led the last Administrative Conference to adopt recommendation No. 12 which requires adversary-type hearings before the agency initially.

Finally we would recommend that the legislative history of the proposal make it clear that the provisions on member representation in the Conference (sec. 4) will not stand in the way of bylaws which provide for agency staff participation in Conference committees, where appropriate.

The Bureau of the Budget has advised that there is no objection from the standpoint of the administration's program to the submission of this report to your committee.

Sincerely,

(Signed) N. E. HALABY,
Administrator.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in *roman*):

FINDINGS AND DECLARATION OF POLICY

SEC. 2. The Congress finds and declares that—

(a) administration of regulatory and other statutes enacted by Congress in the public interest substantially affects large numbers of private individuals and many areas of business and economic activity;

(b) the protection of public and private interests requires continuing attention to the administrative procedure of Federal agencies to insure maximum efficiency and fairness in achieving statutory objectives;

(c) responsibility for assuring fair and efficient administrative procedure is inherent in the general responsibilities of officials appointed to administer Federal statutes;

(d) experience has demonstrated that cooperative effort among Federal officials, assisted by private citizens and others whose interest, competence, and objectivity enable them to make a unique contribution, can find solutions to complex problems and achieve substantial progress in improving the effectiveness of administrative procedure; and

(e) it is the purpose of this Act to provide suitable arrangements through which Federal agencies, assisted by outside experts, may cooperatively study mutual problems, exchange information, and develop recommendations for action by proper authorities to the end that private rights may be fully protected and regulatory activities and other Federal responsibilities may be carried out expeditiously in the public interest.

DEFINITIONS

SEC. 3. As used in this Act—

(a) "Administrative program" includes any Federal function which involves protection of the public interest and the determination of rights, privileges, and obligations of private persons through rulemaking, adjudication, licensing or investigation, as those terms are used in the Administrative Procedure Act (5 U.S.C. 1001-1011).

(b) "Administrative Agency" means any authority as defined by Section 2(a) of the Administrative Procedure Act (5 U.S.C. 1001(a)).

(c) "Administrative procedure" means procedure used in carrying out an administrative program and shall be broadly construed to include any aspect of agency organization, procedure, or management which may affect the equitable consideration of public and private interests, the fairness of agency decisions, the speed of agency action, and the relationship of operating methods to later judicial review, but shall not be construed to include the scope of agency responsibility as established by law or matters of substantive policy committed by law to agency discretion.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

SEC. 4. (a) There is hereby established the Administrative Conference of the United States (hereinafter referred to as the "Conference").

(b) The Conference shall be composed of—

(1) a full-time Chairman, who shall be appointed for a five-year term by the President, by and with the advice and consent of the Senate. The Chairman shall receive compensation at the highest rate established by law for the chairman of an independent regulatory board or commission, and may continue to serve until his successor has been appointed and has qualified;

(2) the chairman of each independent regulatory board or commission or a person designated by such board or commission;

(3) the head of each executive department or other administrative agency which is designated by the President, or a person designated by such head of a department or agency;

(4) when authorized by the Council, one or more appointees from any such board, commission, department, or agency, designated by the department or agency head or, in the case of a board or commis-

sion, by the head of such board or Commission with the approval of the board or commission;

(5) persons appointed by the President to membership upon the Council hereinafter established who are not otherwise members of the Conference; and

(6) other members in such number as will assure full representation of the viewpoints of private citizens and the utilization of diverse experience, who shall be appointed by the Chairman, with the approval of the Council, for terms of two years. Members appointed by the Chairman shall be members of the practicing bar, scholars in the field of administrative law or government, or others specially informed by knowledge and experience with respect to Federal administrative procedure.

(c) Members of the Conference other than the Chairman shall receive no compensation for service, but members appointed from outside the Federal Government shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 73b-2) for persons serving without compensation.

DUTIES AND POWERS OF THE CONFERENCE

SEC. 5. To carry out the purposes of this Act the Conference is authorized to—

(a) study the efficiency, adequacy, and fairness of the administrative procedure used by administrative agencies in carrying out administrative programs;

(b) make recommendations to administrative agencies, collectively or individually, and to the President, the Congress, or the Judicial Conference of the United States, as it deems appropriate;

(c) arrange for interchange among administrative agencies of information potentially useful in improving administrative procedure; and

(d) collect information and statistics from administrative agencies and publish such reports as it deems useful for evaluating and improving administrative procedure.

ORGANIZATION OF THE CONFERENCE

SEC. 6. (a) The membership of the Conference meeting in plenary session shall constitute the Assembly of the Conference. The Assembly shall have ultimate authority over all activities of the Conference. Specifically, it shall have power to (1) adopt such recommendations as it deems appropriate for improving administrative procedure: *Provided*, That any member or members who disagree with a recommendation adopted by the Assembly shall be accorded the privilege of entering dissenting opinions and alternative proposals in the record of Conference proceedings, and the opinions and proposals so entered shall accompany the Conference recommendation in any publication or distribution thereof; and (2) adopt bylaws and regulations not inconsistent with this Act for carrying out the functions of the Conference, including the creation of such committees as it deems necessary for the conduct of studies and the development of recommendations for consideration by the Assembly.

(b) The Conference shall include a Council composed of the Chairman of the Conference, who shall be the Chairman of the Council, and ten

other members appointed by the President for three-year terms, except that the Council members initially appointed shall serve for one, two, or three years, as designated by the President, and each member may continue to serve until a successor is appointed. The Council shall have power to (1) determine the time and place of plenary sessions of the Conference and the agenda for such meetings and it shall call at least one plenary session each year; (2) propose bylaws and regulations, including rules of procedure and committee organization, for adoption by the Assembly; (3) make recommendations to the Conference or its committees upon any subject germane to the purposes of the Conference; (4) receive and consider reports and recommendations of committees of the Conference and transmit them to members of the Conference with the views and recommendations of the Council; (5) designate a member of the Council to preside at meetings of the Council in the absence or incapacity of the Chairman and Vice Chairman; (6) designate such additional officers of the Conference as it may deem desirable; (7) approve or revise the Chairman's budgetary proposals; and (8) exercise such other powers as may be delegated to it by the Assembly.

(c) The Chairman shall be the chief executive of the Conference. In that capacity he shall have power to (1) make inquiries into matters he deems important for Conference consideration, including matters proposed by persons inside or outside the Federal Government; (2) be the official spokesman for the Conference in relations with the several branches and agencies of the Federal Government and with interested organizations and individuals outside the Government, including responsibility for encouraging Federal agencies to effectuate the recommendations of the Conference; (3) request agency heads to provide information needed by the Conference, which information shall be supplied to the extent permitted by law; (4) recommend to the Council appropriate subjects for action by the Conference; (5) appoint, with the approval of the Council, members of committees authorized by the bylaws and regulations of the Conference; (6) prepare, for approval of the Council, estimates of the budgetary requirements of the Conference; (7) appoint employees, subject to the civil service and classification laws, define their duties and responsibilities, and direct and supervise their activities; (8) rent office space in the District of Columbia; (9) provide necessary services for the Assembly, the Council, and the committees of the Conference; (10) organize and direct studies ordered by the Assembly or the Council, utilizing from time to time, as appropriate, experts and consultants, who may be employed as authorized by section 15 of the Administrative Expenses Act of 1946, as amended (5 U.S.C. 55a), but at rates for individuals not to exceed \$100 per diem; (11) upon request of the head of any agency, furnish assistance and advice on matters of administrative procedure; and (12) exercise such additional authority as may be delegated to him by the Council or the Assembly. The Chairman shall preside at meetings of the Council and at each plenary session of the Conference, to which he shall make a full report concerning the affairs of the Conference since the last preceding plenary session. The Chairman shall, on behalf of the Conference, transmit to the President and the Congress an annual report and such interim reports as he deems desirable; such reports shall set forth the compliance of the agencies with the recommendations of the Conference.

(d) *The President may designate a member of the Council as Vice Chairman, who shall serve as Chairman in the event of a vacancy in that office or in the absence or incapacity of the Chairman.*

(e) *Each member of the Conference shall participate in his individual capacity and not as a representative of any governmental or non-governmental organization. Members of the Conference who are not regular Federal officials or personnel shall be special government employees for the purposes of sections 203, 205, 207, 208, and 209 of Title 18, United States Code.*

APPROPRIATIONS

SEC. 7. There are hereby authorized to be appropriated such sums as may be necessary to accomplish the purposes of this Act.

APPENDIX I

HISTORY OF THE CONCEPT OF THE ADMINISTRATIVE CONFERENCE

The general idea of an administrative conference as proposed by this committee is far from new. The history of the Administrative Conference idea is both interesting and instructive, and it has a most direct bearing upon the establishment of a permanent Conference as proposed in S 1664.

EARLY HISTORY

The basic concept of an administrative conference was first expressed in 1950 by Clyde B. Aitchison, Commissioner of the Interstate Commerce Commission.¹ The timing of Commissioner Aitchison's statement was propitious.

In July 1949, the chairman of the Special Subcommittee of the Judiciary Committee of the House of Representatives had announced in the course of hearings relating to delays in the trial of certain cases: "* * * we have communicated with Chief Justice Vinson and we have asked him to request the Senior Council of Circuit Judges, when they meet in September, to endeavor to develop some timesaving procedures, procedures especially in the antitrust laws." Thereafter, at its September 1949 meeting, the Judicial Conference of the United States adopted a resolution which, in part, read:

"The Conference was of the opinion that experience has indicated the desirability of examining the present procedure governing controversies arising under the antitrust laws and the various statutes establishing regulatory agencies with a view to advancing their effective, expeditious, and economic disposition, and authorized the designation of a committee of the conference to consider [means by which these ends might be achieved]."

The Chief Justice appointed a committee of 10 judges, Circuit Judges Stone, Magruder, Augustus Hand, Lindley, and Prettyman, and District Judges Chesnut, Kloeb, Leahy, Rifkind, and Yankwich.

At its first meeting the committee took action which is reflected in the following extract from a letter from the committee to the Chief Justice:

"The committee was troubled by the assignment to it of the administrative agency phase of the general problem. The members of the committee were of the view that their own limited experience in this field would place a limited value upon their recommendations in the field.

"After careful discussion the committee unanimously instructed me to suggest respectfully to you the appointment of a second section to this committee, to be composed of persons familiar with the problems of the administrative agency procedure; for example, members or general counsel of commissions or experienced private practitioners before the agencies, or both."

¹ See his address to the ICC Practitioners Association, 18 ICC Prac. J., pp. 118, 120-122 (1950).

Thereupon the Chief Justice authorized the appointment of "an Advisory Committee, composed of persons in and out of the Government familiar with the problems of administrative agency procedure." On June 20, 1950, such an Advisory Committee was appointed. It had 12 members² including 3 members of administrative agencies, 3 general counsel for agencies, 2 private practitioners who had then recently left membership on administrative agencies, and 3 lawyers in the general practice with prior administrative law experience.

This Advisory Committee spent 9 months in "a firsthand investigation of the causes of excessive delay and expense and unduly voluminous records in the procedures of Federal regulatory agencies, and possible remedies therefor." On March 30, 1951, it submitted its report, which contained a dozen recommendations. The first was for an "Administrative Agency Conference." This idea initially had been suggested by Commissioner Clyde Aitchison the previous year. The Advisory Committee said:

"The regulatory agencies themselves must solve this problem [of excessive delay and expense and unduly voluminous records]. The solution may best be accomplished by the cooperation of all agencies involved; in fact, a cooperative approach, with mutual exchange of experience and suggestions, seems imperative for the most efficient functioning of the administrative agencies. With such an approach to this problem in mind, your committee's primary recommendation is that the Judicial Conference suggest to the President that he call or cause to be called, a conference of representatives of the administrative agencies having adjudicatory and substantial rulemaking functions, for the purpose of devising ways and means for achieving the objectives with which this committee is concerned."

The Judicial Conference committee to which this report was addressed approved it, and the Judicial Conference of the United States itself approved it. At its meeting in September 1951, the Judicial Conference of the United States adopted a resolution as follows:

"Upon consideration, the Conference ordered that the committees' suggestions and recommendations with respect to the call of a conference of representatives of the administrative agencies having adjudicatory and substantial rulemaking functions, be approved with this additional recommendation:

"That representatives from the Federal judiciary and the bar as may be desired be designated to attend said Conference and to serve in such capacity as the President may determine."

Chief Justice Vinson duly transmitted this suggestion to the President.

TEMPORARY CONFERENCE UNDER PRESIDENT EISENHOWER

On April 29, 1953, President Eisenhower issued a document addressed "To All Executive Departments and Administrative Agencies." He said, in part: "Accordingly, I am happy to call a conference of representatives of the departments and agencies, and of the judiciary and the bar, for the purpose of studying the problems thus described." The President requested each department and agency having adju-

² E. Barrett Prettyman, chairman; Clyde B. Aitchison, John Carson, Benedict P. Cottone, Robert K. McConaughy, E. L. Reynolds, Paul L. Styles, Preston C. King, Jr., Joseph J. O'Connell, Jr., Bradford Ross, John L. Sullivan, Roger J. Whiteford.

dicatory and rulemaking functions to designate a representative to meet with other such representatives in a conference. With the agreement of the Chief Justice the President invited three Federal judges to participate. The President also asked 3 trial examiners and 12 practicing lawyers to participate.

Thus the Conference was composed of 75 members, including 57 members designated by agencies. This Conference came to be known as the President's Conference on Administrative Procedure. It was organized as follows: a "Committee on Organization and Procedure," consisting of six members, was appointed and acted as an executive committee, planning the organization and the rules of procedure. Nine other standing committees were appointed: prehearing, pleadings, evidence, trial problems, hearing officers, judicial review, uniform rules, office of Federal administrative procedure, and style.

These committees conducted studies of the subjects assigned to them by the Conference. Some of them conducted extensive hearings. They summoned to their assistance prominent experts in the field, who were denominated consultants. The committees prepared reports, some of which were extensive and contained much basic material. These reports were circulated to the members of the Conference but were not debated or acted upon by the Conference. The committees also submitted "recommendations," which were direct and succinct and based upon or drawn from reports. These recommendations were debated and adopted or rejected. When adopted, they were referred to the Committee on Style for editorial revision.

The Conference held four plenary sessions, June 10, 11, 1953, November 23, 24, 1953, October 14, 15, 1954, and November 8, 9, 1954. It adopted 35 recommendations, 2 addressed to the President, 3 to the Judicial Conference, 7 to the Civil Service Commission, 1 to the General Services Administration, and 22 to the various Government agencies. It adopted a final report, which was duly transmitted to the President and also published. As its final action the Conference adopted a resolution recommending that a similar conference be established on a permanent basis. President Eisenhower acknowledged receipt of the report on March 3, 1955, and said, in part:

"The work of the Conference has shown that an exchange of experience and views between Federal administrators and between them and members of the practicing bar and the judiciary produces useful results. I am confident that means will be devised for continuing such cooperative effort."

The resolution respecting a permanent Conference was referred by the President to the Attorney General.

Thereafter several parallel series of events developed. The Judicial Conference of the District of Columbia Circuit, the American Bar Association, the Federal Bar Association, and the Chairmen of the large independent agencies all studied and took action in respect to the proposal for a permanent Conference of the agencies respecting their procedures and other problems.

The Judicial Conference of the District of Columbia Circuit consists of all the Federal judges on the district court and the circuit court of appeals, various Federal and municipal law officials, and about 120 members of the practicing bar who are selected by a committee of judges and lawyers. Several months before a meeting of the Conference its Committee on Arrangements selects topics for debate, consideration, and action. Study groups, usually composed of 20 or 25

members each, are assigned to study and present recommendations on these topics. The membership of the 1959 Conference included a number of Government attorneys and a large number of attorneys engaged in practice before the administrative agencies.

In the fall of 1958, in preparing for the Judicial Conference of the District of Columbia Circuit to be held in the spring of 1959, the Committee on Arrangements listed as one topic for the consideration of the Conference "Problems of Administrative Law." This study group presented three reports. All reports recommended the establishment of a permanent Conference on Administrative Procedure but they differed on machinery for implementation.

One report recommended that the Attorney General call together a group to formulate plans for the Conference and to make appropriate recommendations to the President for its establishment. Another report recommended that the President call an interim conference pending enactment of a statute, and that the permanent Conference be established by legislation. The third report recommended that the Chairmen of the seven large independent agencies meet and establish the Conference.

After extensive debate, the Judicial Conference of the District of Columbia Circuit adopted the proposal that an interim Conference be established by the President and a permanent Conference be established by an act of the Congress. That recommendation was transmitted to the Judicial Conference of the United States, which at its September 1959 meeting appointed a committee to consider the matter. At its meeting in March 1960, the Judicial Conference of the United States adopted the following resolution:

"Resolved, That this Conference approves the establishment of a permanent Conference on the procedures of executive departments and administrative agencies in adjudications and rule makings, in which Conference representatives of the departments, the agencies, and the practicing bar would participate, for the purpose of exchanging information and making recommendations to the several agencies and departments for the improvement of the administration of justice by them. The Chief Justice, as Chairman of this Conference, is authorized to communicate this action, at such times as he deems appropriate, to the President and to such other officers, including Members of the Congress, as may be concerned with this subject from time to time; and the Chief Justice is further authorized to implement this action further in such other ways as he may deem appropriate."

Chief Justice Warren thereafter transmitted the resolution, together with his own strong personal recommendation for such a Conference, to President Eisenhower.

In the meantime, coincident with the study undertaken by the Judicial Conference of the District of Columbia Circuit, a special committee of the Federal Bar Association began a study of the matter and made a report to the national council of that association. On May 20, 1959, the day before the meeting of the Judicial Conference of the District of Columbia Circuit, the National Council of the Federal Bar unanimously adopted a resolution which endorsed the concept of a permanent Conference, and called upon the Attorney General to invite a committee of representatives of the agencies and the practicing bar to formulate plans to be presented to the President for such a Conference.

On September 24, 1959, Chief Justice Warren addressed the annual convention of the Federal Bar Association in a speech which was one of the key events in the development of administrative law in recent years. Among other things he said:

"Today it is generally recognized that far too many administrative proceedings in Federal agencies are also subject to excessive and unnecessary delay. Perhaps even more discouraging in the agency proceedings is the fact that meaningful information on the state of the backlog, and the extent of the delay, is not even available.

"This is true because there presently exist few criteria or standards for determining how long it should normally take to get final agency action on the ordinary administrative case.

* * * * *

"If there is anything which symbolizes the disillusion of the American people—of the lay public—in our legal system, it is the factor of unconscionable delay.

* * * * *

"Turning briefly to the legal services performed in the administrative agencies, I know that many of you are aware that last year 21 Federal administrative agencies terminated in excess of 25,000 proceedings, and that the trend is continually upward * * *.

"For this reason, I am particularly glad to inform you that the Judicial Conference of the United States, at its meeting last week, approved in principle the proposal for a permanent Conference on Administrative Procedure—which the Federal Bar Association and judges have been advocating.

"Such a conference—composed basically of agency representatives, but with practicing lawyers and other participants as well, is sorely needed to conduct continuing and practical studies of ways to eliminate undue delay, expense, and volume of hearing record; to develop uniform rules of practice and procedure; and generally to promote greater efficiency and economy in the administrative process."

Also in the meantime, the council of the Administrative Law Section of the American Bar Association, at its Miami meeting in August 1959, adopted a resolution endorsing the idea of a permanent Conference on Administrative Procedure: an interim conference to be set up by the President and a permanent conference to be created by the Congress. This, we may note, was the same as the view taken by the Judicial Conference of the District of Columbia Circuit. That resolution was adopted by the section, transmitted by special order to the house of delegates, and there adopted. Transmission of the resolution to the Judicial Conference of the United States and to the President was authorized. At the same time the house of delegates designated the council of the administrative law section and the special committee on procedure to act jointly in the preparation of legislation on the subject. Proposed legislation was prepared for presentation to the midwinter meeting of the house of delegates in Chicago in February 1961, but action on that report was postponed until the August 1961 meeting.

In February 1960, the Subcommittee on Legislative Oversight, Committee on Interstate and Foreign Commerce of the House of Representatives, of which Congressman Oren Harris was the chairman, submitted an interim report (H. Rept. 1258, 86th Cong., 2d sess.) in which attention was called to the steps being taken in the process

of the formulation of a proposed permanent group to study the overall problems of the agencies. The subcommittee said: "Current thinking is that this new organization, to be known as the Conference on Administrative Procedures, will perform, in the administrative law field, the present functions in the judicial field which are performed by the Conference on Judicial Procedures."

The chairmen of six of the large independent agencies (Civil Aeronautics Board, Federal Trade Commission, Federal Power Commission, Federal Communications Commission, Securities and Exchange Commission, and Interstate Commerce Commission), in the meantime, jointly prepared a letter to the President. This letter made clear the need for a permanent Administrative Conference, and suggested the composition of such a Conference. The letter further proposed that an Organization Committee prepare an agenda for the Conference and suggested further that consideration of legislation not be undertaken until after organization of the Conference and that recommendations respecting legislation be adopted by the Conference itself. In this letter it was proposed that eight of the Cabinet departments, the Civil Service Commission, the Atomic Energy Commission, the Federal Aviation Agency, and the seven large independent agencies send representatives to the Conference, and that certain bar associations nominate members. "Such associations," said the letter, "might well include" the American Bar, the Federal Bar, the ICC Practitioners, the Motor Carrier Lawyers Association, the Federal Power Bar, the Federal Communications Bar, the Federal Trial Examiners' Conference, "and similar organizations." That letter was transmitted to the President on August 25, 1960.

President Eisenhower on August 29, 1960, concurred in the proposal and authorized arrangements for the initial organization of such a Conference. A committee, which came to be known as an Organization Committee, was thereupon appointed and after several weeks of work completed a proposed set of bylaws.

The Conference envisioned by that set of bylaws was an assembly-like body of 65 delegates, 40 of whom would be from the Government and 25 from outside the Government. One delegate would be designated by the secretary of each of nine Cabinet departments, two from each of the seven big agencies, two trial examiners, and six to be appointed at large by the Chairman, with the approval of the Executive Committee. The plan envisioned that five delegates be named by the president of the American Bar Association, two by the president of the Federal Bar Association, eight from the practicing bar, five from university faculties, and five experts in nonlegal fields, all to be named by the Chairman, with the approval of the Executive Committee. The plan provided for standing committees, for a permanent secretariat, and for liaison with the Congress through the naming of six representatives, three from each House, by the Vice President and Speaker, respectively. The proposed bylaws also described in some detail the subjects which would be considered by the Conference.

About this time the national election of 1960 occurred, and further action looking toward a call of the Conference was postponed.

TEMPORARY CONFERENCE UNDER PRESIDENT KENNEDY

President-elect Kennedy promptly after the election named James M. Landis, former dean of the Harvard Law School, to prepare for him a report on the administrative agencies and their problems. Dean Landis submitted his report on December 26, 1960. In it he referred to the President's request of August 29, 1960, to the Organization Committee and to the preliminary draft of bylaws. He recommended that this work be encouraged and continued. He said, in part:

"* * * Much can come from this effort, including not merely revisions in our administrative procedures but also the making of our regulatory agencies into a system just as the Judicial Conference of the United States has made a system of what were once isolated and individual Federal courts * * *."

* * * * *

"The concept of an Administrative Conference of the United States promises more to the improvement of administrative procedures and practices and to the systematization of the Federal regulatory agencies than anything presently on the horizon. It could achieve all that the concept of the Office of Administrative Procedure envisaged by the Hoover Commission and endorsed by the American Bar Association hoped to accomplish, and can do so at a lesser cost and without the danger of treading on the toes of any of the agencies."

President Kennedy sent to the Congress a special message on regulatory agencies on April 13, 1961.³ In the course of that message he discussed the establishment of an Administrative Conference of the United States. He said: "The process of modernizing and reforming administrative procedures is not an easy one. It requires both research and understanding. Moreover, it must be a continuing process, critical of its own achievements and striving always for improvement." He announced that he had issued an Executive order⁴ calling at the earliest practicable date the Conference, to be organized by a council of lawyers and other experts from the agencies, the bar, and university faculties. He said that the Council would consider questions concerning the effective dispatch of agency business, "along with the desirability of making this conference, if it provides itself, a continuing body for the resolution of these varied and changing procedural problems." He further said:

"The results of such an Administrative Conference will not be immediate but properly pursued they can be enduring. As the Judicial Conference did for the courts, it can bring a sense of unity of our administrative agencies and a desirable degree of uniformity in their procedures. The interchange of ideas and techniques that can ensue from working together on problems that upon analysis pay prove to be common ones, the exchanges of experience, and the recognition of advances achieved as well as solutions found impractical, can give new life and new efficiency to the work of our administrative agencies."

In his Executive order, President Kennedy established the Administrative Conference of the United States, to consist of a Council of 11 members named by him and a general membership from the

³ H. Doc. 135, 87th Cong.

⁴ Executive Order 10934, 26 Fed. Reg. 3233 (Apr. 15, 1961), reproduced in the appendix.

executive departments, the administrative agencies, the practicing bar, and other persons specially informed. "The purpose of the conference," says the Executive order, "shall be to assist the President, the Congress, and the administrative agencies and executive departments in improving existing administrative procedures." The order provided that the composition of the membership should be determined by the Council; that the total membership be not less than 50 persons, a majority of whom should be from the executive departments and administrative agencies; that the Government members be designated by the heads of their respective departments and agencies; and that the other general members be named by the Chairman, with the approval of the Council. The order provided that the Director of the Office of Administrative Procedure, which is in the Department of Justice, should act as the Executive Secretary of the Conference. It authorized the making of arrangements with the President of the Senate and the Speaker of the House for participation by interested committees of the Congress.

The Subcommittee on Administrative Practice and Procedure of the Senate Committee on the Judiciary submitted a report (S. Rept. 168, 87th Cong., 1st sess.) on April 14, 1961, in the course of which it said:

"The subcommittee recommends that every assistance should be given in making permanent an Administrative Procedure Conference, and that Congress should provide the Office of Administration and Reorganization with funds to provide a permanent secretariat for that Conference.

* * * * *

"That such an assembly of the persons most directly concerned with the functioning of administrative agencies offers a continuing possibility of improvement in procedures through interchange of ideas is a matter of universal agreement * * *. The subcommittee recommends that every congressional encouragement be given to the establishment and continuation of the conference. Since, as we have pointed out elsewhere, we believe that the guidance of the President is necessary for the improvement of the administrative process, we recommend that the permanent staff should be a part of the Office of Administration and Reorganization, and therefore a part of the President's own staff."

On April 29, 1961, the President announced the appointment of the Council of the Administrative Conference, and the Council was immediately called into session. On May 23, 1961, the Council finalized plans for the institution and operation of the Conference. It named the agencies to be invited, approved a list of non-Government members to be named, adopted bylaws to be proposed to the Conference, adopted in general terms a program of work for the Conference, and adopted a budget to be submitted to the Congress. It called the first meeting of the Conference for Tuesday, June 27, 1961, in Washington.

The Conference met in six plenary sessions. The first was held on June 27, 1961. The five later sessions convened on December 5 and 6, 1961, April 3, 1962, June 29, 1962, October 16, 17, and 18, 1962, and December 4 and 5, 1962.

The nine standing committees met for the first time immediately following the first plenary session. During the 18 months which followed there were a total of 93 such committee meetings.

The Conference rendered a final report of its activities under date of December 15, 1962.⁵ At the same time, under date of December 17, 1962, the Conference, pursuant to section 2 of Executive Order 10934, reported its suggestions of appropriate means to be employed in the future for the purpose of improving the processes of administrative agencies. It said, in part:

"We recommend the establishment of means by which agencies in the Federal Government may cooperatively, continuously, and critically examine their administrative processes and related organizational problems. Believing that the main sources of information as well as the resolve to couple fairness with efficiency lie within the agencies themselves, we urge that the proposed organization be composed largely of governmental personnel, but with a sufficient infusion of outside experts to assure objectivity and variety of views."

It recommended the creation, on a permanent footing, of an Administrative Conference of the United States. Thereafter, the Bureau of the Budget translated the recommendation of the Conference for a continuing Conference into the form of a proposed bill. The draft was introduced in the Senate by Senator Long of Missouri as S. 1664 (88th Cong., 1st sess.) and is the subject of this report.

⁵ Reprinted in Senate Committee on the Judiciary, Subcommittee on Administrative Practice and Procedure, "Selected Reports of the Administrative Conference of the United States," S. Doc. —, 88th Cong., 1st sess. (1963).

APPENDIX II

[Executive Order 10934]

ESTABLISHING THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Whereas the performance of regulatory functions and related responsibilities for the determination of private rights, privileges, and obligations by executive departments and administrative agencies of the United States Government substantially affects large numbers of private individuals and many areas of economic and business activity; and

Whereas it is essential to the protection of private and public interests and to the sustained development of the national economy that Federal administrative procedures ensure maximum efficiency and fairness in the performance of these governmental functions; and

Whereas the steady expansion of the Federal administrative process during the past several years has been attended by increasing concern over the efficiency and adequacy of department and agency procedures; and

Whereas the experience of the several groups which have examined Federal administrative procedures in recent years demonstrates that substantial progress in improving department and agency procedures can result from cooperative effort by the departments and agencies working together with members of the practicing bar and other interested persons:

Now, therefore, by virtue of the authority vested in me as President of the United States, it is ordered as follows:

SECTION 1. *Establishment of the Conference.* There is hereby established a conference to be known as the Administrative Conference of the United States, which shall consist of a Council of eleven members named by the President, one of whom he shall designate to be Chairman of the Conference, and a general membership from Federal executive departments and administrative agencies, the practicing bar, and other persons specially informed by knowledge and experience with respect to Federal administrative procedures.

SEC. 2. *Purpose.* The purpose of the Conference shall be to assist the President, the Congress and the administrative agencies and executive departments in improving existing administrative procedures. To this end the Conference shall conduct studies of the efficiency, adequacy and fairness of procedures by which Federal executive departments and administrative agencies protect the public interest and determine the rights, privileges and obligations of private persons. The Conference shall from time to time report to the President any conclusions reached by its members based on such studies, together with suggestions for appropriate measures to improve the administrative process. The Conference shall make a Final Report to the President no later than December 31, 1962, summarizing its activities,

evaluating the need for further studies of administrative procedures, and suggesting appropriate means to be employed for this purpose in the future.

SEC. 3. *Membership.* The composition of the general membership of the Conference shall be determined by the Council; provided that the total membership shall be not less than fifty persons, and at least a majority of the total membership shall be from Federal executive departments and administrative agencies, so distributed as to effect an appropriate representation among the several departments and agencies. General members from Government service shall be designated by the heads of their respective departments and agencies. Other general members shall be named by the Chairman with the approval of the Council from the practicing bar, scholars in the fields of administrative law and government, and other persons specially informed by knowledge and experience with respect to Federal administrative procedures. Members of the Conference who are not in Government service shall participate in the activities of the Conference solely as private individuals without official responsibility on behalf of the Government of the United States.

SEC. 4. *Staff.* The Attorney General of the United States is hereby authorized and directed to furnish to the Conference research and staff assistance from the Office of Administrative Procedure in the Department of Justice, through the Director of that Office and the Chairman of the Conference, and the Director of the Office of Administrative Procedure shall act as Executive Secretary of the Conference.

SEC. 5. *Operation of the Conference.* The Conference shall have authority to adopt bylaws and regulations not inconsistent with the provisions of this order for the conduct of its functions. Every member of the Conference will be expected to participate in all respects according to his own views, and not necessarily as a representative of any department or agency or other group from which he may have been chosen.

SEC. 6. *Committees.* Committees of the Conference shall be appointed by the Chairman, with the approval of the Council. Committees shall have authority to designate subcommittees from their own membership for the purposes of conducting studies and making reports to the full committees.

SEC. 7. *Functions of the Council.* The Council is hereby authorized to perform the following functions:

(a) To meet under the chairmanship and upon the call of the Chairman of the Conference.

(b) To determine the composition of the general membership of the Conference as provided in section 3 above.

(c) To make appropriate arrangements with the President of the Senate and the Speaker of the House of Representatives for participation in the activities of the Conference by interested committees of the Congress. Representatives of the Congress shall have the privilege of the floor of the Conference.

(d) To determine the time and place of plenary sessions of the Conference.

(e) To propose bylaws and regulations, including rules of procedure and Committee organization, for adoption by the Conference.

(f) To propose to the Conference the matters concerning which the Conference and its committees shall conduct investigations and studies.

(g) To receive and consider reports of committees of the Conference and proposals adopted by the Conference, and to transmit them to the President together with the views of the Council concerning such matters.

SEC. 8. *Cooperation of Federal agencies.* All executive departments and administrative agencies of the Federal Government are authorized and directed to cooperate with the Conference and to furnish such information and assistance not inconsistent with law as may reasonably be required in the performance of its functions.

SEC. 9. *Expenditures of the Conference.* Each executive department and administrative agency which is represented by one or more members of the Conference named or designated as provided in section 3 of this order shall, as may be necessary for the purpose of effectuating the provisions of this order, furnish assistance to the Conference in accordance with section 214 of the act of May 3, 1945, 59 Stat. 134 (31 U.S.C. § 691). Such assistance may include detailing employees to the Conference to perform such functions consistent with the purposes of this order as the Conference may assign to them.

JOHN F. KENNEDY.

THE WHITE HOUSE, April 13, 1961.

[26 Fed. Reg. 3233 (April 15, 1961)]



88TH CONGRESS
1ST SESSION

S. 1664

[Report No. 621]

IN THE SENATE OF THE UNITED STATES

JUNE 4, 1963

Mr. LONG of Missouri introduced the following bill; which was read twice and referred to the Committee on the Judiciary

OCTOBER 29 (legislative day, OCTOBER 22), 1963

Reported by Mr. LONG of Missouri, with amendments

[Omit the part struck through and insert the part printed in italic]

A BILL

To provide for continuous improvement of the administrative procedure of Federal agencies by creating an Administrative Conference of the United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Administrative Confer-
4 ence Act".

5 FINDINGS AND DECLARATION OF POLICY

6 SEC. 2. The Congress finds and declares that—

7 (a) administration of regulatory and other statutes
8 enacted by Congress in the public interest substantially
9 affects large numbers of private individuals and many
10 areas of business and economic activity;

1 (b) the protection of public and private interests
2 requires continuing attention to the administrative proce-
3 dure of Federal agencies to insure maximum efficiency
4 and fairness in achieving statutory objectives;

5 ~~(c)~~ the diversity of Federal activities frequently
6 precludes the establishment by statute of administrative
7 procedure which would be generally suitable for use by
8 all agencies;

9 ~~(d)~~ (c) responsibility for assuring fair and efficient
10 administrative procedure is inherent in the general
11 responsibilities of officials appointed to administer Fed-
12 eral statutes;

13 ~~(e)~~ (d) experience has demonstrated that coopera-
14 tive effort among Federal officials, assisted by private
15 citizens and others whose interest, competence, and
16 objectivity enable them to make a unique contribution,
17 can find solutions to complex problems and achieve
18 substantial progress in improving the effectiveness of
19 administrative procedure; and

20 ~~(f)~~ (e) it is the purpose of this Act to provide
21 suitable arrangements through which Federal agencies,
22 assisted by outside experts, may cooperatively study
23 mutual problems, exchange information, and develop
24 recommendations for action by proper authorities to
25 the end that private rights may be fully protected and

regulatory activities and other Federal responsibilities may be carried out expeditiously in the public interest.

DEFINITIONS

SEC. 3. As used in this Act—

(a) “Administrative program” includes any Federal function which involves protection of the public interest and the determination of rights, privileges, and obligations of private persons through “rulemaking” or “adjudication” as those terms are defined in section 2 of the Administrative Procedure Act (5 U.S.C. 1001), except that it shall not include—

~~(1) any function or matter specified in section 4 (1) or (2) of the Act except to the extent that such function or matter consists of proceedings and decisionmaking required to be conducted in conformity with sections 7 and 8 of the Act or the imposition of penalties on private persons through agency action not subject to sections 7 and 8; or~~

~~(2) any matter specified in section 5 (1), (3), (5), and (6) of the Act: rulemaking, adjudication, licensing or investigation, as those terms are used in the Administrative Procedure Act (5 U.S.C. 1001-1011).~~

(b) “Administrative agency” includes all executive departments and any other Federal agency, including a constituent agency of an executive department, which carries

1 ~~out an administrative program.~~ means any authority as de-
 2 fined by section 2(a) of the Administrative Procedure Act
 3 (5 U.S.C. 1001(a)).

4 (c) "Administrative procedure" means procedure used
 5 in carrying out an administrative program and shall be
 6 broadly construed to include any aspect of agency organiza-
 7 tion, procedure, or management which may affect the equi-
 8 table consideration of public and private interests, the fairness
 9 of agency decisions, the speed of agency action, and the
 10 relationship of operating methods to later judicial review,
 11 but shall not be construed to include the scope of agency
 12 responsibility as established by law or matters of substantive
 13 policy committed by law to agency discretion.

14 ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

15 SEC. 4. (a) There is hereby established the Admin-
 16 istrative Conference of the United States (hereinafter re-
 17 ferred to as the "Conference").

18 (b) The Conference shall be composed preponderantly
 19 of Federal officials and personnel, including of—

20 (1) a full-time Chairman, who shall be appointed
 21 for a five-year term by the President, by and with the
 22 advice and consent of the Senate. The Chairman shall
 23 receive compensation at the highest rate established by
 24 law for the chairman of an independent regulatory

board or commission, and may continue to serve until his successor has been appointed and has qualified;

(2) the chairman of each independent regulatory board or commission *or a person designated by such board or commission*;

(3) the head of each executive department or other administrative agency which is designated by the President, *or a person designated by such head of a department or agency*;

(4) when authorized by the Council, ~~an appointee~~ *one or more appointees* from any such board, commission, department, or agency, designated by the department or agency head or, in the case of a board or commission, by the ~~Chairman~~ *head of such board or commission* with the approval of the board or commission;

(5) persons appointed by the President to membership upon the Council hereinafter established who are not otherwise members of the Conference; and

(6) other members in such number as will assure ~~adequate~~ *full* representation of the viewpoints of private citizens and the utilization of diverse experience, who shall be appointed by the Chairman, with the approval of the Council, for terms of two years. Members ap-

1 pointed by the Chairman shall be members of the prac-
2 ticing bar, scholars in the field of administrative law or
3 government, or others specially informed by knowledge
4 and experience with respect to Federal administrative
5 procedure.

6 ~~(c) Each member under paragraphs (b)(2) and~~
7 ~~(b)(3), above, may designate an alternate member to repre-~~
8 ~~sent him, as occasion requires, in plenary sessions or other~~
9 ~~activities of the Conference. The alternate member shall~~
10 ~~have all the obligations and privileges of full membership~~
11 ~~in the Conference on such occasions.~~

12 ~~(d)~~ (c) Members of the Conference other than the
13 Chairman shall receive no compensation for service, but
14 members appointed from outside the Federal Government
15 shall be allowed travel expenses, including per diem in lieu
16 of subsistence, as authorized by law (5 U.S.C. 73b-2) for
17 persons serving without compensation.

18 DUTIES AND POWERS OF THE CONFERENCE

19 SEC. 5. To carry out the purposes of this Act the Con-
20 ference is authorized to—

21 (a) study the efficiency, adequacy, and fairness of
22 the administrative procedure used by administrative
23 agencies in carrying out administrative programs;

24 (b) make recommendations to administrative
25 agencies, collectively or individually, and to the Presi-

1 dent, the Congress, or the Judicial Conference of the
2 United States, as it deems appropriate;

3 (c) arrange for interchange among administrative
4 agencies of information potentially useful in improving
5 administrative procedure; and

6 (d) collect *information and statistics* from adminis-
7 trative agencies and publish such reports ~~of operating~~
8 ~~statistics~~ as it deems useful for evaluating and improv-
9 ing administrative procedure.

10 ORGANIZATION OF THE CONFERENCE

11 SEC. 6. (a) The membership of the Conference meeting
12 in plenary session shall constitute the Assembly of the Con-
13 ference. The Assembly shall have ultimate authority over
14 all activities of the Conference. Specifically, it shall have
15 power to (1) adopt such recommendations as it deems ap-
16 propriate for improving administrative procedure: *Provided*,
17 That any member or members who disagree with a recom-
18 mendation adopted by the Assembly shall be accorded the
19 privilege of entering dissenting opinions and alternative pro-
20 posals in the record of Conference proceedings, and the
21 opinions and proposals so entered shall accompany the Con-
22 ference recommendation in any publication or distribution
23 thereof; and (2) adopt bylaws and regulations not incon-
24 sistent with this Act for carrying out the functions of the Con-
25 ference, including the creation of such committees as it deems

1 necessary for the conduct of studies and the development of
2 recommendations for consideration by the Assembly.

3 (b) The Conference shall include a Council composed
4 ~~preponderantly of Federal officials and personnel. The~~
5 ~~Council shall consist of the Chairman of the Conference,~~
6 ~~who shall be the Chairman of the Council, and ten other~~
7 ~~members appointed by the President for three-year terms,~~
8 ~~except that the Council members initially appointed shall~~
9 ~~serve for one, two, or three years, as designated by the~~
10 ~~President, and each member may continue to serve until a~~
11 ~~successor is appointed. The Council shall have power to~~
12 (1) determine the time and place of plenary sessions of
13 the Conference and the agenda for such meetings *and it*
14 *shall call at least one plenary session each year;* (2) pro-
15 pose bylaws and regulations, including rules of procedure
16 and committee organization, for adoption by the Assembly;
17 (3) make recommendations to the Conference or its com-
18 mittees upon any subject germane to the purposes of the
19 Conference; (4) receive and consider reports and recom-
20 mendations of committees of the Conference and transmit
21 them to members of the Conference with the views and
22 recommendations of the Council; (5) designate a member
23 of the Council to preside at meetings of the Council in the
24 absence or incapacity of the Chairman and Vice Chairman;
25 (6) designate such additional officers of the Conference as

1 it may deem desirable; (7) approve or revise the Chair-
2 man's budgetary proposals; and (8) exercise such other
3 powers as may be delegated to it by the Assembly.

4 (c) The Chairman shall be the chief executive of the
5 Conference. In that capacity he shall have power to (1)
6 make ~~preliminary~~ inquiries into matters he deems important
7 for Conference consideration, including matters proposed by
8 persons inside or outside the Federal Government; (2) be
9 the official spokesman for the Conference in relations with
10 the several branches and agencies of the Federal Government
11 and with interested organizations and individuals outside the
12 Government, including responsibility for encouraging Fed-
13 eral agencies to effectuate the recommendations of the Con-
14 ference; (3) request agency heads to provide information
15 needed by the Conference, which information shall be
16 supplied to the extent permitted by law; ~~or agency regula-~~
17 ~~tions~~; (4) recommend to the Council appropriate subjects
18 for action by the Conference; (5) appoint, with the approval
19 of the Council, members of committees authorized by the
20 bylaws and regulations of the Conference; (6) prepare, for
21 approval of the Council, estimates of the budgetary re-
22 quirements of the Conference; (7) appoint employees, sub-
23 ject to the civil service and classification laws, define their
24 duties and responsibilities, and direct and supervise their
25 activities; (8) rent office space in the District of Columbia;

1 (9) provide necessary services for the Assembly, the Coun-
2 cil, and the committees of the Conference; (10) organize and
3 direct studies ordered by the Assembly or the Council, utiliz-
4 ing from time to time, as appropriate, experts and consultants
5 who may be employed as authorized by section 15 of the
6 Administrative Expenses Act of 1946, as amended (5
7 U.S.C. 55a), but at rates for individuals not to exceed \$100
8 per diem; (11) upon request of the head of any agency,
9 furnish assistance and advice on matters of administrative
10 procedure; and (12) exercise such additional authority as
11 may be delegated to him by the Council or the Assembly.
12 The Chairman shall preside at meetings of the Council and
13 at each plenary session of the Conference, to which he shall
14 make a full report concerning the affairs of the Conference
15 since the last preceding plenary session. The Chairman
16 shall, on behalf of the Conference, transmit to the President
17 and the Congress an annual report and such interim reports
18 as he deems desirable; *such reports shall set forth the com-*
19 *pliance of the agencies with the recommendations of the*
20 *Conference.*

21 (d) The President may designate a member of the
22 Council as Vice Chairman, who shall serve as Chairman
23 in the event of a vacancy in that office or in the absence or
24 incapacity of the Chairman.

25 (e) *Each member of the Conference shall participate*

1 *in his individual capacity and not as a representative of any*
2 *governmental or nongovernmental organization. Members*
3 *of the Conference who are not regular Federal officials or*
4 *personnel shall be special Government employees for the pur-*
5 *poses of sections 203, 205, 207, 208, and 209 of title 18,*
6 *United States Code.*

7 APPROPRIATIONS

8 SEC. 7. There are hereby authorized to be appropriated
9 such sums as may be necessary to accomplish the purposes
10 of this Act.

88TH CONGRESS
1ST SESSION

S. 1664

[Report No. 621]

A BILL

To provide for continuous improvement of the administrative procedure of Federal agencies by creating an Administrative Conference of the United States, and for other purposes.

By Mr. Long of Missouri

JUNE 4, 1963

**Read twice and referred to the Committee on the
Judiciary**

OCTOBER 29 (legislative day, OCTOBER 22), 1963
Reported with amendments

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF
BUDGET AND FINANCE

(For information only;
should not be quoted
or cited)

Issued October 31, 1963
For actions of October 30, 1963
88th-1st, No. 174

Marketing.....	22
Military construction...	16
National parks.....	9
Pay bill.....	15,30
Personnel.....	15,30
Public debt.....	13
Public Law 480.....	1
Purchasing.....	27
Reclamation.....	2
Recreation.....	20
Rural areas.....	5
Salaries.....	15,30
Service corps.....	23
Soviet agriculture.....	6
TVA.....	19
Water pollution.....	24
Water resources.....	4
Watersheds.....	21
Wheat.....	25

CONTENTS

Administrative procedure..	3
Air pollution.....	10
Appropriations.....	12,31,32
Committees.....	17
Cotton.....	11
Credit unions.....	29
Electrification.....	4
Expenditures.....	31
Farm labor.....	14,26
Food.....	6
Foreign aid.....	1
Foreign policy.....	8
Foreign trade.....	7,18,22,25
Lands.....	28

HIGHLIGHTS: Senate debated foreign aid authorization bill. Sen. Young (N. Dak.) discussed failure of Russian farm system to produce sufficient food. Sen. Hart commended Land and People Conference in Great Lakes region. Rep. Dorn urged passage of the Cooley cotton bill. House committee voted to report public debt limit increase bill. House committee agreed to provisions of clean pay bill.

SENATE

1. FOREIGN AID. Continued debate on H. R. 7885, the foreign aid authorization bill (pp. 19516-25, 19531-62, 19568-74). Sen. Ellender objected to the inclusion in this bill of amendments to various sections of Public Law 480 and urged that such amendments be deleted from the bill "particularly in view of the fact that Public Law 480 will be up for over-all review next year at which time all proposed amendments can be considered at the same time and their effect on over-all legislation can be better weighed and determined" (pp. 19524-5). Sens. Lausche, Javits, and Proxmire submitted amendments intended to be proposed to this bill (p. 19496).
2. RECLAMATION. Passed as reported S. 26, to authorize construction of the Dixie reclamation project, Utah. pp. 19513-6
3. ADMINISTRATIVE PROCEDURE. Passed as reported S. 1664, to provide for continuous improvement of the administrative procedure of Federal agencies by creating an Administrative Conference of the United States. pp. 19566-7

4. WATER RESOURCES; ELECTRIFICATION. The Subcommittee on Irrigation and Reclamation of the Interior and Insular Affairs Committee voted to report to the full committee H. R. 5949, to grant consent to the amendment by Colo. and N. Mex. of the Costilla Creek Compact, and H. R. 4062, to amend the act authorizing the transmission and disposition by Interior of electric energy generated at Falcon Dam on the Rio Grande and to authorize Interior to market power generated at Amistad Dam on the Rio Grande. p. D853
5. RURAL AREAS DEVELOPMENT. Sen. Hart reviewed and commended the Northern Great Lakes Regional Land and People Conference to explore resource development possibilities in the area, stating that "I am in complete sympathy with this regional approach to our problems. I commend Secretary Freeman for providing the impetus for this effort." pp. 19505-6
6. FOOD; SOVIET AGRICULTURE. Sen. Young (N.Dak.) reviewed the causes of a food shortage in Russia, stating that it was due in part to a drought but "the most important factor is failure of the Communist system to produce sufficient food." p. 19497
7. FOREIGN TRADE. Sen. Stennis urged stricter measures to discourage ships and planes under the registry of friendly nations from transporting cargo to or from Cuba. pp. 19525-6
8. FOREIGN POLICY. Sen. Mansfield inserted his recent address, "U. S. Foreign Policy in the World Today." pp. 19508-11
9. NATIONAL PARKS. Sen. Byrd (Va.) paid tribute to Conrad L. Wirth upon announcement of his intention to retire as Director of the National Park Service. pp. 19507-8
10. AIR POLLUTION. Sens. Muskie and Bayh were added as cosponsors of S. 432, to extend and accelerate the Federal air pollution control program. p. 19496

HOUSE

11. COTTON. Rep. Dorn urged passage of the Cooley cotton bill and stated that the bill "is scheduled for action on this floor the week following Veterans' Day." p. 19577
12. APPROPRIATIONS. Rep. Jensen said that "it is the opinion of the minority members of the House Appropriations Committee that there should be no further delay in finally processing legislation respecting the expenditures for fiscal year 1964." pp. 19577-8
13. PUBLIC DEBT. The Ways and Means Committee voted to report (but did not actually report) H. R. 8969, to temporarily increase the public debt limit for the period ending June 30, 1964 (p. D855). The Committee was given permission to have until midnight Mon., Nov. 4, to file a report on the bill. p. 19587
14. FARM LABOR. Rep. Cohelan inserted an article stating that the crop growers in Tulare County, Calif., would be hurt if the Mexican farm labor program were ended. pp. 19615-7
Rep. Gonzalez summarized the reasons for his opposition to extending the Mexican farm labor program. pp. 19635-7
15. PERSONNEL; SALARIES. The "Daily Digest" states that the Post Office and Civil Service Committee agreed to provisions of a clean bill on Federal pay increases and that the Committee will meet Thurs., Oct. 31, to act on the new bill, H. R. 8986. p. D855

letter dated January 14, 1963, from the Administrative Office of the U.S. Courts.

JOLAN BERCEZELLER

The bill (H.R. 1311) for the relief of Jolan Berczeller was considered, ordered to a third reading, read the third time, and passed.

PETER CARSON

The bill (H.R. 1345) for the relief of Peter Carson was considered, ordered to a third reading, read the third time, and passed.

MRS. ROZSI NEUMAN

The bill (H.R. 2260) for the relief of Mrs. Rozsi Neuman was considered, ordered to a third reading, read the third time, and passed.

MRS. BARBARA RAY VAN OLPHEN

The bill (H.R. 2445) for the relief of Mrs. Barbara Ray Van Olphen was considered, ordered to a third reading, read the third time, and passed.

MERCEDES ROBINSON ORR

The bill (H.R. 2754) for the relief of Mercedes Robinson Orr, was considered, ordered to a third reading, read the third time, and passed.

WOO YOU LYN

The bill (H.R. 2757) for the relief of Woo You Lyn (also known as Hom You Fong and Lyn Fong Y. Hom) was considered, ordered to a third reading, read the third time, and passed.

KAZIMIERZ KURMAS AND ZDZISLAW KURMAS

The bill (H.R. 2968) for the relief of Kazimierz Kurmas and Zdzislaw Kurmas was considered, ordered to a third reading, read the third time, and passed.

LEE SUEY JOM

The bill (H.R. 3384) for the relief of Lee Suey Jom (also known as Tommy Lee and Lee Shu Chung) was considered, ordered to a third reading, read the third time, and passed.

DR. PEDRO B. MONTEMAYOR, JR.

The bill (H.R. 6097) for the relief of Dr. Pedro B. Montemayor, Jr. was considered, ordered to a third reading, read the third time, and passed.

WAI CHAN CHENG LIU

The bill (H.R. 6260) for the relief of Wai Chan Cheng Liu was considered, ordered to a third reading, read the third time, and passed.

ESTABLISHMENT OF INTERSTATE SCHOOL DISTRICT BY HANOVER, N.H., AND NORWICH, VT.

The joint resolution (H.J. Res. 626) granting the consent of Congress to the

establishment of an interstate school district by Hanover, N.H., and Norwich, Vt., and to an agreement between Hanover School District, New Hampshire, and Norwich Town School District, Vermont, was considered, ordered to a third reading, read the third time, and passed.

The preamble was agreed to.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 616), explaining the purposes of the joint resolution.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE

The purpose of the joint resolution is to grant the consent of Congress to the establishment of an interstate school district by the adjoining communities of Hanover, N.H., and Norwich, Vt., as authorized by counterpart legislation enacted by the Legislatures of New Hampshire and Vermont. The resolution would also grant the consent of Congress to an implementing agreement between the Hanover, N.H., and the Norwich, Vt., school boards as provided by such counterpart legislation.

STATEMENT

The Legislatures of Vermont and New Hampshire have authorized the establishment of an interstate school district, known as the Dresden School District, as a "body corporate and politic" for the purpose of providing a unified school system on an educationally and economically sound basis for the adjoining communities of Hanover and Norwich. Both State measures contain provisions for local referendums upon adoption.

The interstate school district would combine the junior and senior high school interests of the towns of Hanover, N.H., and Norwich, Vt., which are located directly across from each other on the Connecticut River. The junior and senior high schools of the two towns would be consolidated into what is commonly referred to in that part of the country as a union district. The union district referred to in this proposed legislation has reference to a central operation of a junior high school and a senior high school for the combined students of both towns.

The separate school districts of Hanover, N.H., and Norwich, Vt., will also continue for the purpose of raising taxes for the operation of their individual elementary schools.

Powers of the new union district include the right to sue, to secure property, to have a seal, to make bylaws to exercise condemnation, to contract, and to have agents. The bistrate legislation contains requirements for meetings, officers, etc. It makes provision for the appropriation and apportionment of funds for borrowing and for the taking of property.

The school boards of Hanover and Norwich have entered into an agreement which sets forth the mutual obligations of the two towns and specifies the name of the new interstate district. Under this agreement the elementary schools of Hanover and Norwich will also be administered by the same school superintendent and the curriculums of the elementary schools in each district will be standardized.

The agreement between the two school districts provides for a proper formula for apportioning the costs and appropriations of the new union district which will operate the junior and senior high schools. Reference in the joint resolution to the "Dresden School District" reflects the terminology agreed upon by the two separate school districts for the title of the new union or interstate district.

The joint resolution contains the usual reservations of the right of Congress, or any of its standing committees, to require the

disclosure and the furnishing of information and data by the new school district and of the right to alter, amend, or repeal the consent granted.

The Department of Justice, in reporting to the chairman of this committee on S. 1628, a bill having a similar purpose as House Joint Resolution 626, advises that that Department has no objection to the enactment of this legislation.

The Department of Health, Education, and Welfare, in a letter addressed to the chairman of this committee with reference to a similar Senate bill, advises that that Department recommends favorable consideration of legislation which would accomplish the purpose set out by House Joint Resolution 626.

The committee is of the opinion that this resolution has a meritorious purpose and, accordingly, recommends favorable consideration of House Joint Resolution 626, without amendment.

Attached hereto and made a part hereof are appendixes A and B, setting out the laws of the State of New Hampshire and the laws of the State of Vermont, authorizing the establishment of the interstate school district. Also attached and made a part hereof are the reports submitted by the Department of Justice and the Department of Health, Education, and Welfare, to the chairman of this committee relating to a similar Senate bill.

HAI YUNG JUNG AND JOHNNY JUNG

The Senate proceeded to consider the bill (S. 1524) for the relief of Hai Yung Jung and Johnny Jung, which had been reported from the Committee on the Judiciary, with an amendment, to strike out all after the enacting clause and insert:

That, notwithstanding the provisions of the second sentence in section 205(c) of the Immigration and Nationality Act, the petitions filed in behalf of Hai Yung Jung and Johnny Jung by Mr. and Mrs. Warren Hugh Cation pursuant to the provisions of section 205(b) of that Act may be approved, subject to all the conditions in that section relating to eligible orphans.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

ARTHUR WENDELL BOLTA

The Senate proceeded to consider the bill (S. 1737) for the relief of Arthur Wendell Bolta, which had been reported from the Committee on the Judiciary, with an amendment on page 1, line 7, after the word "Act," to strike out the comma and "under such conditions and controls as the Attorney General, after consultation with the Surgeon General of the United States Public Health Service, Department of Health, Education, and Welfare, may deem necessary to impose"; so as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding the provision of section 212 (a) (1) of the Immigration and Nationality Act, Arthur Wendell Bolta may be issued a visa and admitted to the United States for permanent residence if he is found to be otherwise admissible under the provisions of such Act: *Provided*, That, unless the beneficiary is entitled to care under chapter 55 of title 10, United States Code, a suitable and proper bond or undertaking, approved by the Attorney General, be deposited as prescribed by section 213 of the Immigration and Nationality Act: *Provided further*, That this

exemption shall apply only to a ground for exclusion of which the Department of State or the Department of Justice had knowledge prior to the enactment of his Act.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

THOMAS B. BOLLERS AND EARLENE BOLLERS

The bill (S. 1129) for the relief of Thomas B. Bollers and Earlene Bollers was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding the time limitation prescribed for filing claims against the United States under section 2732 of title 10, United States Code, the Secretary of the Army is authorized and directed to receive, consider, and act upon any claim filed under such section by Thomas B. Bollers and his wife, Earlene Bollers, if such claim is filed within one year after the date of enactment of this Act, the said Thomas B. and Earlene Bollers having allegedly sustained financial losses as a result of the water supply for their house having been contaminated by the disposition of waste chemicals from the Rocky Mountain Arsenal, Colorado: Provided, That nothing in this Act shall constitute an admission of liability on the part of the United States.

AMENDMENT OF TITLE 28 OF UNITED STATES CODE RELATING TO VENUE GENERALLY

The bill (H.R. 2985) to amend section 1391 of title 28 of the United States Code, relating to venue generally was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 620), explaining the purposes of the bill.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE

The purpose of this proposed legislation is to amend section 1391 of title 28, United States Code, relating to venue generally, in order to permit actions on tort claims to be brought in the judicial district in which the act or omission occurred.

STATEMENT

H.R. 2985 is identical in terms with S. 299, which is now pending before the Judiciary Committee.

Section 1391 of title 28, United States Code, provides generally for the venue of the U.S. district courts. As presently drawn, actions on tort claims can be brought only in the districts of the residence of the defendant and the plaintiff. This bill would permit actions on tort claims to also be brought in the judicial district in which the act or omission occurred.

The addition of the proposed new subsection to section 1391 would promote a simple and orderly administration of justice by permitting tort suits to be brought in the place where the witnesses are ordinarily most conveniently available.

The Judicial Conference of the United States at its session in March 1961, when considering S. 701 of the 87th Congress, voted to approve the language contained in the

presently proposed legislation. A communication from the Administrative Office of the U.S. Courts to the chairman of the Committee on the Judiciary, dated August 18, 1961, advising of this action by the Judicial Conference is attached hereto and made a part hereof.

The Department of Justice also recommends the enlargement of the present venue statute as proposed by the language of this bill. The communication from the Deputy Attorney General to the chairman of the Senate Judiciary Committee, dated April 28, 1961, recommending this action is attached hereto and made a part hereof.

Development in transportation has increased the mobility of the population of the United States to a degree undreamed of before the days of the automobile and the airplane. The interest of justice would be best served by enlarging the present provisions of the venue statute and permitting those who have a cause of action in tort to assert their claim in the judicial district where the act or omission complained of occurred. This position is consistent with sound principles of common law and the statutes of many of the States. It is therefore recommended that H.R. 2985 be favorably considered.

Also attached hereto and made a part hereof is a communication from the Administrative Office of the U.S. Courts dated March 25, 1963, to the chairman of the Committee on the Judiciary of the House of Representatives in regard to the proposed legislation.

IMPROVEMENT OF ADMINISTRATIVE PROCEDURE OF FEDERAL AGENCIES

The Senate proceeded to consider the bill (S. 1664) to provide for continuous improvement of the administrative procedure of Federal agencies by creating an Administrative Conference of the United States, and for other purposes, which had been reported from the Committee on the Judiciary, with amendments, on page 2, after line 4 to strike out:

(c) the diversity of Federal activities frequently precludes the establishment by statute of administrative procedure which would be generally suitable for use by all agencies.

At the beginning of line 9, to strike out "(d)" and insert "(c)"; at the beginning of line 13, to strike out "(e)" and insert "(d)"; at the beginning of line 20, to strike out "(f)" and insert "(e)"; on page 3, line 8, after the word "through", to strike out "rulemaking" or "adjudication" as those terms are defined in section 2 of the Administrative Procedure Act (5 U.S.C. 1001), except that it shall not include—

(1) any function or matter specified in section 4 (1) or (2) of the Act except to the extent that such function or matter consists of proceedings and decision-making required to be conducted in conformity with sections 7 and 8 of the Act or the imposition of penalties on private persons through agency action not subject to sections 7 and 8, or

(2) any matter specified in section 5 (1), (3), (5), and (6) of the Act," and insert "rulemaking adjudication, licensing or investigation, as those terms are used in the Administrative Procedure Act (5 U.S.C. 1001-1011)."; in line 23, after the word "agency", to strike out "includes all executive departments and

any other Federal agency, including a constituent agency of an executive department, which carries out an administrative program," and insert "means any authority as defined by section 2(a) of the Administrative Procedure Act (5 U.S.C. 1001 (a))."; on page 4, line 18, after the word "composed", to strike out "preponderantly of Federal officials and personnel, including" and insert "of"; on page 5, line 4, after the word "commission", to insert "or a person designated by such board or commission"; in line 8, after the word "President", to insert a comma and "or a person designated by such head of a department or agency"; in line 10, after the word "Council", to strike out "an appointee" and insert "one or more appointees"; in line 14, after the word "the", to strike out "Chairman" and insert "head of such board or commission"; at the beginning of line 20, to strike out "adequate" and insert "full"; on page 6, after line 5, to strike out:

(c) Each member under paragraphs (b) (2) and (b) (3), above, may designate an alternate member to represent him, as occasion requires, in plenary sessions or other activities of the Conference. The alternate member shall have all the obligations and privileges of full membership in the Conference on such occasions.

At the beginning of line 12, to strike out "(d)" and insert "(c)"; on page 7, line 6, after the word "collect", to insert "information and statistics"; in line 7, after the word "reports", to strike out "of operating statistics"; on page 8, at the beginning of line 4, to strike out "preponderantly of Federal officials and personnel. The Council shall consist"; in line 13, after the word "meetings", to insert "and it shall call at least one plenary session each year"; on page 9, line 6, after the word "make", to strike out "preliminary"; in line 16, after the word "law", to strike out "or agency regulations"; on page 10, line 18, after the word "desirable", to insert a semicolon and "such reports shall set forth the compliance of the agencies with the recommendations of the Conference"; and after line 24, to insert:

(e) Each member of the Conference shall participate in his individual capacity and not as a representative of any governmental or nongovernmental organization. Members of the Conference who are not regular Federal officials or personnel shall be special Government employees for the purposes of sections 203, 205, 207, 208, and 209 of title 18, United States Code.

So as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Administrative Conference Act".

FINDINGS AND DECLARATION OF POLICY

SEC. 2. The Congress finds and declares that—

(a) administration of regulatory and other statutes enacted by Congress in the public interest substantially affects large numbers of private individuals and many areas of business and economic activity;

(b) the protection of public and private interests requires continuing attention to the administrative procedure of Federal agencies to insure maximum efficiency and fairness in achieving statutory objectives;

(c) responsibility for assuring fair and efficient administrative procedure is inherent in the general responsibilities of officials appointed to administer Federal statutes;

(d) experience has demonstrated that cooperative effort among Federal officials, assisted by private citizens and others whose interest, competence, and objectivity enable them to make a unique contribution, can find solutions to complex problems and achieve substantial progress in improving the effectiveness of administrative procedure; and

(e) it is the purpose of this Act to provide suitable arrangements through which Federal agencies, assisted by outside experts, may cooperatively study mutual problems, exchange information, and develop recommendations for action by proper authorities to the end that private rights may be fully protected and regulatory activities and other Federal responsibilities may be carried out expeditiously in the public interest.

DEFINITIONS

SEC. 3. As used in this Act—

(a) "Administrative program" includes any Federal function which involves protection of the public interest and the determination of rights, privileges, and obligations of private persons through rulemaking, adjudication, licensing or investigation, as those terms are used in the Administrative Procedure Act (5 U.S.C. 1001-1011).

(b) "Administrative agency" means any authority as defined by section 2(a) of the Administrative Procedure Act (5 U.S.C. 1001(a)).

(c) "Administrative procedure" means procedure used in carrying out an administrative program and shall be broadly construed to include any aspect of agency organization, procedure, or management which may affect the equitable consideration of public and private interests, the fairness of agency decisions, the speed of agency action, and the relationship of operating methods to later judicial review, but shall not be construed to include the scope of agency responsibility as established by law or matters of substantive policy committed by law to agency discretion.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

SEC. 4. (a) There is hereby established the Administrative Conference of the United States (hereinafter referred to as the "Conference").

(b) The Conference shall be composed of—

(1) a full-time Chairman, who shall be appointed for a five-year term by the President, by and with the advice and consent of the Senate. The Chairman shall receive compensation at the highest rate established by law for the chairman of an independent regulatory board or commission, and may continue to serve until his successor has been appointed and has qualified;

(2) the chairman of each independent regulatory board or commission or a person designated by such board or commission;

(3) the head of each executive department or other administrative agency which is designated by the President, or a person designated by such head of a department or agency;

(4) when authorized by the Council, one or more appointees from any such board, commission, department, or agency, designated by the department or agency head or, in the case of a board or commission, by the head of such board or commission with the approval of the board or commission;

(5) persons appointed by the President to membership upon the Council hereinafter established who are not otherwise members of the Conference; and

(6) other members in such number as will assure full representation of the viewpoints of private citizens and the utilization of di-

verse experience, who shall be appointed by the Chairman, with the approval of the Council, for terms of two years. Members appointed by the Chairman shall be members of the practicing bar, scholars in the field of administrative law or government, or others specially informed by knowledge and experience with respect to Federal administrative procedure.

(c) Members of the Conference other than the Chairman shall receive no compensation for service, but members appointed from outside the Federal Government shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 73b-2) for persons serving without compensation.

DUTIES AND POWERS OF THE CONFERENCE

SEC. 5. To carry out the purposes of this Act the Conference is authorized to—

(a) study the efficiency, adequacy, and fairness of the administrative procedure used by administrative agencies in carrying out administrative programs;

(b) make recommendations to administrative agencies, collectively or individually, and to the President, the Congress, or the Judicial Conference of the United States, as it deems appropriate;

(c) arrange for interchange among administrative agencies of information potentially useful in improving administrative procedure; and

(d) collect information and statistics from administrative agencies and publish such reports as it deems useful for evaluating and improving administrative procedure.

ORGANIZATION OF THE CONFERENCE

SEC. 6. (a) The membership of the Conference meeting in plenary session shall constitute the Assembly of the Conference. The Assembly shall have ultimate authority over all activities of the Conference. Specifically, it shall have power to (1) adopt such recommendations as it deems appropriate for improving administrative procedure: *Provided*, That any member or members who disagree with a recommendation adopted by the Assembly shall be accorded the privilege of entering dissenting opinions and alternative proposals in the record of Conference proceedings, and the opinions and proposals so entered shall accompany the Conference recommendation in any publication or distribution thereof; and (2) adopt bylaws and regulations not inconsistent with this Act for carrying out the functions of the Conference, including the creation of such committees as it deems necessary for the conduct of studies and the development of recommendations for consideration by the Assembly.

(b) The Conference shall include a Council composed of the Chairman of the Conference, who shall be the Chairman of the Council, and ten other members appointed by the President for three-year terms, except that the Council members initially appointed shall serve for one, two, or three years, as designated by the President, and each member may continue to serve until a successor is appointed. The Council shall have power to (1) determine the time and place of plenary sessions of the Conference and the agenda for such meetings and it shall call at least one plenary session each year; (2) propose bylaws and regulations, including rules of procedure and committee organization, for adoption by the Assembly; (3) make recommendations to the Conference or its committees upon any subject germane to the purposes of the Conference; (4) receive and consider reports and recommendations of committees of the Conference and transmit them to members of the Conference with the views and recommendations of the Council; (5) designate a member of the Council to preside at meetings of the Council in the absence or incapacity of the Chairman and Vice Chairman; (6) designate

such additional officers of the Conference as it may deem desirable; (7) approve or revise the Chairman's budgetary proposals; and (8) exercise such other powers as may be delegated to it by the Assembly.

(c) The Chairman shall be the chief executive of the Conference. In that capacity he shall have power to (1) make inquiries into matters he deems important for Conference consideration, including matters proposed by persons inside or outside the Federal Government; (2) be the official spokesman for the Conference in relations with the several branches and agencies of the Federal Government and with interested organizations and individuals outside the Government, including responsibility for encouraging Federal agencies to effectuate the recommendations of the Conference; (3) request agency heads to provide information needed by the Conference, which information shall be supplied to the extent permitted by law; (4) recommend to the Council appropriate subjects for action by the Conference; (5) appoint, with the approval of the Council, members of committees authorized by the bylaws and regulations of the Conference; (6) prepare, for approval of the Council, estimates of the budgetary requirements of the Conference; (7) appoint employees, subject to the civil service and classification laws, define their duties and responsibilities, and direct and supervise their activities; (8) rent office space in the District of Columbia; (9) provide necessary services for the Assembly, the Council, and the committees of the Conference; (10) organize and direct studies ordered by the Assembly or the Council, utilizing from time to time, as appropriate, experts and consultants who may be employed as authorized by section 15 of the Administrative Expenses Act of 1946, as amended (5 U.S.C. 55a), but at rates for individuals not to exceed \$100 per diem; (11) upon request of the head of any agency, furnish assistance and advice on matters of administrative procedure; and (12) exercise such additional authority as may be delegated to him by the Council or the Assembly. The Chairman shall preside at meetings of the Council and at each plenary session of the Conference, to which he shall make a full report concerning the affairs of the Conference since the last preceding plenary session. The Chairman shall, on behalf of the Conference, transmit to the President and the Congress an annual report and such interim reports as he deems desirable; such reports shall set forth the compliance of the agencies with the recommendations of the Conference.

(d) The President may designate a member of the Council as Vice Chairman, who shall serve as Chairman in the event of a vacancy in that office or in the absence or incapacity of the Chairman.

(e) Each member of the Conference shall participate in his individual capacity and not as a representative of any governmental or nongovernmental organization. Members of the Conference who are not regular Federal officials or personnel shall be special Government employees for the purposes of sections 203, 205, 207, 208, and 209 of title 18, United States Code.

APPROPRIATIONS

SEC. 7. There are hereby authorized to be appropriated such sums as may be necessary to accomplish the purposes of this Act.

The amendments were agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I thank the Senator from Oregon for his courtesy in yielding this much time; and I also thank the Senator from Vermont [Mr. AIKEN] for serving as a check.

AMENDMENT OF FOREIGN ASSISTANCE ACT OF 1961

The Senate resumed the consideration of the bill (H.R. 7885) to amend further the Foreign Assistance Act of 1961, as amended, and for other purposes.

Mr. MORSE. Mr. President, I wish to lay before the Senate the documentation in a case study which illustrates why some of us oppose the foreign aid program in its present form and believe that it should be drastically overhauled.

I ask unanimous consent that the documents to which I shall refer may be printed in full in the RECORD at the conclusion of this portion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. MORSE. On April 2 of this year, I received a letter dated March 28 from Mr. Edward E. Cooper, superintendent of the Crow-Applegate School District in Eugene, Oreg. Mr. Cooper put forth an idea for the establishment of contacts between public school districts in the United States and areas of similar size in Central America, with the people of the school district in this country sponsoring education in a selected area abroad. He pointed out that there are 17 departments in Honduras and 18 school districts in Lane County, Oreg. In Mr. Cooper's view it would have been possible to get the people of school districts in Lane County to accept this as a personal and somewhat competitive challenge.

On April 9, I wrote to Mr. Teodoro Moscoso, Coordinator of the Alliance for Progress, enclosing a copy of Mr. Cooper's letter and asking if he would give me his considered reaction to it, because it seemed to me a suggestion worth pursuing.

On April 20, I received an acknowledgment, signed by Mr. Craig Raupe, Director of Congressional Liaison of the Agency for International Development, in which he said:

Your request is receiving our prompt attention and I will write you again at the earliest practicable date.

On May 10, I received a further letter from Mr. Raupe in which he said that the AID agency was sending Mr. Cooper's letter directly to its mission in Honduras for consideration by the mission and that in addition the Agency in Washington would consider the possible application of Mr. Cooper's suggestion to the education programs in other Latin American countries.

On May 15, I again wrote to Mr. Moscoso asking that I be informed of the results of his consideration of this matter as well as of the reaction of the AID mission in Honduras when that was received.

On June 15, I received a letter from Mr. Moscoso, dated the day before, confirming that I would be informed of the Honduras AID mission's evaluation. Mr. Moscoso also stated that AID's field personnel had been asked to look at the proposal not only as it might apply to Honduras, but also in terms of its possible application in other Latin American countries.

On September 12—almost exactly 3 months later—I again wrote to Mr. Moscoso concerning this proposal, and stated my view that sufficient time had elapsed for the AID mission in Honduras to have evaluated the suggestion.

On October 3, as we all know, there occurred a coup d'etat in Honduras, as a result of which our aid program in that country was properly suspended.

On October 16, I received a letter dated October 10, and signed by Mr. James H. Boren, Special Assistant to the U.S. Coordinator, Alliance for Progress, in which he said:

We have received comments from our mission in Honduras but the mission's initial reaction plus present circumstances make this particular country participation a difficult program to develop.

Meanwhile, Mr. Boren said, he was discussing the proposal with the mission director of another Central American country and that this mission director was inquiring into the possibility of combining the school district participation with another phase of his educational program.

There we have it, Mr. President. Seven months after an imaginative private citizen in Eugene, Oreg., advanced an idea concerning the Alliance for Progress, the bureaucracy of the Alliance has been unable to make up its mind as to whether the idea is good or bad. In the meantime, the freely elected democratic Government of Honduras has fallen.

I do not suggest that the Government would have been saved if the proposal about people-to-people contacts through school districts had been put into effect. But I do suggest that the record of bureaucratic inertia and resistance to outside suggestions which is revealed in the correspondence I have just summarized is symptomatic of one of the serious defects of the Alliance for Progress.

I am not complaining because AID did not adopt an idea put forward by one of my constituents. I am complaining because AID seems incapable of considering any idea and coming to a judgment on it.

I wonder how many more countries of Latin America will be lost to democracy before the Congress and the President take the necessary drastic action to revitalize the Alliance for Progress.

EXHIBIT 1

CROW-APPLEGATE SCHOOL

DISTRICT No. 66,

Eugene, Oreg., March 28, 1963.

Hon. WAYNE MORSE,
U.S. Senate,
Washington, D.C.

DEAR SIR: This is a request for information, evaluation of an idea, and assistance. The thought has occurred to me that—

1. If, in our efforts to aid Central America, large problems could be reduced from national to personal they could be solved more efficiently.

2. A fundamental problem is a lack of education. The nature of this problem is such that it requires a basic approach to a solution. In other words it must be broad in scope and concentrated at the bottom of the educational ladder.

3. Immediate gains could be made if contact were established between public school districts in this country and similar sized areas in Central American countries. The

people of a school district here would sponsor education in a selected area. This would divide a national problem into manageable parts and concentrate upon it an individualized, personal effort.

As an example, assume that the people of a school district here would provide financial assistance for the services of a teacher and most needed teaching supplies in a department of Honduras. The teacher would be a Honduran trained in Honduras.

The department of education in Honduras would be asked to select the teachers and provide school districts here with their names and other data.

There are 17 departments in Honduras and 18 school districts in Lane County. It should be possible to get the people of school districts here to accept this as a personal and somewhat competitive challenge.

If school superintendents would provide the educational leadership and local organizations the financial needs it would be possible to cause immediate improvements.

The following could be a second step in the plan.

The department of education in Honduras would be asked to establish some standard of achievement that could be accomplished in 1 year by teachers selected. This could be evidences of educational advancements by students and/or instigating the construction of facilities.

When the standard of achievement has been reached teachers would be transported to this country with Alliance for Progress, or other funds. Each teacher would spend a year in the school district that acted as sponsor for that teacher. Three purposes of this visit would be:

1. The teachers from Honduras would learn, or broaden their knowledge of teaching methods through study, example, and practice.

These visiting teachers would spend some of their time in our public elementary schools on a student-teaching basis.

2. The teachers from Honduras would spend a minimum of time, 1 or 2 hours per day, as resource persons and/or instructors, in our Spanish language programs. They would be paid for this help.

3. They would learn to prepare and use teaching aids and materials. In this connection it seems they could learn to construct simplified teaching machines with easily obtained materials and adapt them to needs in Honduras.

Perhaps the preparation and construction of simplified teaching aids and materials could become a small industry in their country.

The duration of the plan should be established in advance. This decision, as well as others, should be based upon advice from educational leaders in Honduras.

This is not a substitute for any other educational efforts. It is a grass-roots approach designed to produce a greater number of literate citizens. This it would do by dividing a national problem into a number of smaller ones that could be attacked on a somewhat individualized, competitive basis by school districts in this country with cooperation from Honduras. In fact it is a two-way assistance program.

I believe assistance could be obtained from our State and county school superintendents and from the University of Oregon. From these sources we could obtain the leadership of our best qualified people.

If some preliminary experience and proof is needed, perhaps this school district, where I am superintendent, could make a pilot effort. We could, I believe, sponsor a teacher in Honduras and provide essential supplies. Examples of programed textbooks, hand-made teaching machines, and other aids could be provided and adapted to the language and needs of that country.

88TH CONGRESS
1ST SESSION

S. 1664

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 31, 1963

Referred to the Committee on the Judiciary

AN ACT

To provide for continuous improvement of the administrative procedure of Federal agencies by creating an Administrative Conference of the United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Administrative Confer-
4 ence Act".

5 FINDINGS AND DECLARATION OF POLICY

6 SEC. 2. The Congress finds and declares that—

7 (a) administration of regulatory and other statutes
8 enacted by Congress in the public interest substantially
9 affects large numbers of private individuals and many
10 areas of business and economic activity;

1 (b) the protection of public and private interests
2 requires continuing attention to the administrative proce-
3 dure of Federal agencies to insure maximum efficiency
4 and fairness in achieving statutory objectives;

5 (c) responsibility for assuring fair and efficient ad-
6 ministrative procedure is inherent in the general re-
7 sponsibilities of officials appointed to administer Federal
8 statutes;

9 (d) experience has demonstrated that coopera-
10 tive effort among Federal officials, assisted by private
11 citizens and others whose interest, competence, and
12 objectivity enable them to make a unique contribution,
13 can find solutions to complex problems and achieve
14 substantial progress in improving the effectiveness of
15 administrative procedure; and

16 (e) it is the purpose of this Act to provide suit-
17 able arrangements through which Federal agencies,
18 assisted by outside experts, may cooperatively study
19 mutual problems, exchange information, and develop
20 recommendations for action by proper authorities to
21 the end that private rights may be fully protected and

regulatory activities and other Federal responsibilities
may be carried out expeditiously in the public interest.

DEFINITIONS

SEC. 3. As used in this Act—

(a) “Administrative program” includes any Federal
function which involves protection of the public interest and
the determination of rights, privileges, and obligations of
private persons through rulemaking, adjudication, licensing
or investigation, as those terms are used in the Administra-
tive Procedure Act (5 U.S.C. 1001–1011).

(b) “Administrative agency” means any authority as
defined by section 2 (a) of the Administrative Procedure
Act (5 U.S.C. 1001 (a)).

(c) “Administrative procedure” means procedure used
in carrying out an administrative program and shall be
broadly construed to include any aspect of agency organiza-
tion, procedure, or management which may affect the equi-
table consideration of public and private interests, the fairness
of agency decisions, the speed of agency action, and the
relationship of operating methods to later judicial review,
but shall not be construed to include the scope of agency

1 responsibility as established by law or matters of substantive
2 policy committed by law to agency discretion.

3 ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

4 SEC. 4. (a) There is hereby established the Admin-
5 istrative Conference of the United States (hereinafter re-
6 ferred to as the "Conference").

7 (b) The Conference shall be composed of—

8 (1) a full-time Chairman, who shall be appointed
9 for a five-year term by the President, by and with the
10 advice and consent of the Senate. The Chairman shall
11 receive compensation at the highest rate established by
12 law for the chairman of an independent regulatory
13 board or commission, and may continue to serve until
14 his successor has been appointed and has qualified;

15 (2) the chairman of each independent regulatory
16 board or commission or a person designated by such
17 board or commission;

18 (3) the head of each executive department or other
19 administrative agency which is designated by the Presi-
20 dent, or a person designated by such head of a depart-
21 ment or agency;

22 (4) when authorized by the Council, one or more
23 appointees from any such board, commission, depart-
24 ment, or agency, designated by the department or
25 agency head or, in the case of a board or commission,

1 by the head of such board or commission with the ap-
2 proval of the board or commission;

3 (5) persons appointed by the President to mem-
4 bership upon the Council hereinafter established who are
5 not otherwise members of the Conference; and

6 (6) other members in such number as will assure
7 full representation of the viewpoints of private citizens
8 and the utilization of diverse experience, who shall be
9 appointed by the Chairman, with the approval of the
10 Council, for terms of two years. Members appointed by
11 the Chairman shall be members of the practicing bar,
12 scholars in the field of administrative law or govern-
13 ment, or others specially informed by knowledge and
14 experience with respect to Federal administrative pro-
15 cedure.

16 (c) Members of the Conference other than the Chair-
17 man shall receive no compensation for service, but members
18 appointed from outside the Federal Government shall be
19 allowed travel expenses, including per diem in lieu of sub-
20 sistence, as authorized by law (5 U.S.C. 73b-2) for persons
21 serving without compensation.

22 DUTIES AND POWERS OF THE CONFERENCE

23 SEC. 5. To carry out the purposes of this Act the Con-
24 ference is authorized to—

1 (a) study the efficiency, adequacy, and fairness of
2 the administrative procedure used by administrative
3 agencies in carrying out administrative programs;

4 (b) make recommendations to administrative
5 agencies, collectively or individually, and to the Presi-
6 dent, the Congress, or the Judicial Conference of the
7 United States, as it deems appropriate;

8 (c) arrange for interchange among administrative
9 agencies of information potentially useful in improving
10 administrative procedure; and

11 (d) collect information and statistics from adminis-
12 trative agencies and publish such reports as it deems
13 useful for evaluating and improving administrative
14 procedure.

15 ORGANIZATION OF THE CONFERENCE

16 SEC. 6. (a) The membership of the Conference meeting
17 in plenary session shall constitute the Assembly of the Con-
18 ference. The Assembly shall have ultimate authority over
19 all activities of the Conference. Specifically, it shall have
20 power to (1) adopt such recommendations as it deems ap-
21 propriate for improving administrative procedure: *Provided*,
22 That any member or members who disagree with a recom-
23 mendation adopted by the Assembly shall be accorded the
24 privilege of entering dissenting opinions and alternative pro-
25 posals in the record of Conference proceedings, and the

1 opinions and proposals so entered shall accompany the Con-
2 ference recommendation in any publication or distribution
3 thereof; and (2) adopt bylaws and regulations not incon-
4 sistent with this Act for carrying out the functions of the Con-
5 ference, including the creation of such committees as it deems
6 necessary for the conduct of studies and the development of
7 recommendations for consideration by the Assembly.

8 (b) The Conference shall include a Council composed
9 of the Chairman of the Conference, who shall be the Chair-
10 man of the Council, and ten other members appointed by
11 the President for three-year terms, except that the Council
12 members initially appointed shall serve for one, two, or three
13 years, as designated by the President, and each member
14 may continue to serve until a successor is appointed. The
15 Council shall have power to (1) determine the time and
16 place of plenary sessions of the Conference and the agenda
17 for such meetings and it shall call at least one plenary session
18 each year; (2) propose bylaws and regulations, including
19 rules of procedure and committee organization, for adoption
20 by the Assembly; (3) make recommendations to the Con-
21 ference or its committees upon any subject germane to the
22 purposes of the Conference; (4) receive and consider reports
23 and recommendations of committees of the Conference and
24 transmit them to members of the Conference with the views
25 and recommendations of the Council; (5) designate a

1 member of the Council to preside at meetings of the Council
2 in the absence or incapacity of the Chairman and Vice
3 Chairman; (6) designate such additional officers of the
4 Conference as it may deem desirable; (7) approve or revise
5 the Chairman's budgetary proposals; and (8) exercise such
6 other powers as may be delegated to it by the Assembly.

7 (c) The Chairman shall be the chief executive of the
8 Conference. In that capacity he shall have power to (1)
9 make inquiries into matters he deems important for Con-
10 ference consideration, including matters proposed by persons
11 inside or outside the Federal Government; (2) be the official
12 spokesman for the Conference in relations with the several
13 branches and agencies of the Federal Government and with
14 interested organizations and individuals outside the Govern-
15 ment, including responsibility for encouraging Federal
16 agencies to effectuate the recommendations of the Con-
17 ference; (3) request agency heads to provide information
18 needed by the Conference, which information shall be
19 supplied to the extent permitted by law; (4) recommend
20 to the Council appropriate subjects for action by the Con-
21 ference; (5) appoint, with the approval of the Council,
22 members of committees authorized by the bylaws and
23 regulations of the Conference; (6) prepare, for approval
24 of the Council, estimates of the budgetary requirements
25 of the Conference; (7) appoint employees, subject to

1 the civil service and classification laws, define their duties
2 and responsibilities, and direct and supervise their activities;
3 (8) rent office space in the District of Columbia; (9)
4 provide necessary services for the Assembly, the Council,
5 and the committees of the Conference; (10) organize and
6 direct studies ordered by the Assembly or the Council, utiliz-
7 ing from time to time, as appropriate, experts and consultants
8 who may be employed as authorized by section 15 of the
9 Administrative Expenses Act of 1946, as amended (5
10 U.S.C. 55a), but at rates for individuals not to exceed \$100
11 per diem; (11) upon request of the head of any agency,
12 furnish assistance and advice on matters of administrative
13 procedure; and (12) exercise such additional authority as
14 may be delegated to him by the Council or the Assembly.
15 The Chairman shall preside at meetings of the Council and
16 at each plenary session of the Conference, to which he shall
17 make a full report concerning the affairs of the Conference
18 since the last preceding plenary session. The Chairman
19 shall, on behalf of the Conference, transmit to the President
20 and the Congress an annual report and such interim reports
21 as he deems desirable; such reports shall set forth the com-
22 pliance of the agencies with the recommendations of the
23 Conference.

24 (d) The President may designate a member of the
25 Council as Vice Chairman, who shall serve as Chairman

1 in the event of a vacancy in that office or in the absence or
2 incapacity of the Chairman.

3 (e) Each member of the Conference shall participate
4 in his individual capacity and not as a representative of any
5 governmental or nongovernmental organization. Members
6 of the Conference who are not regular Federal officials or
7 personnel shall be special Government employees for the pur-
8 poses of sections 203, 205, 207, 208, and 209 of title 18,
9 United States Code.

10 APPROPRIATIONS

11 SEC. 7. There are hereby authorized to be appropriated
12 such sums as may be necessary to accomplish the purposes
13 of this Act.

Passed the Senate October 30 (legislative day, October
22), 1963.

Attest:

FELTON M. JOHNSTON,

Secretary.

AN ACT

To provide for continuous improvement of the administrative procedure of Federal agencies by creating an Administrative Conference of the United States, and for other purposes.

OCTOBER 31, 1963

Referred to the Committee on the Judiciary

print. pp. 11812-21

House

May 28, 1964

14. ADMINISTRATIVE LAW. A subcommittee of the Judiciary Committee voted to report to the full committee S. 1664, to provide for continuous improvements of the administrative procedure of Federal agencies by creating an Administrative Conference of the U. S. p. D424
15. WATER RIGHTS. Rep. Rhodes, Ariz., criticized H. R. 11395, the Utt bill for coordinated development of the water resources of the Pacific Southwest, stating it would be unfair to Ariz. p. 11812
16. FOREIGN AID. Rep. Ryan, N. Y., inserted a statement by William D. Rogers defending the Alliance for Progress. pp. 11806-7
17. LEGISLATIVE PROGRAM. Rep. Boggs announced the program for this week: Mon., Consent Calendar; Tues., Private Calendar and water-resources research; Wed., road authorizations; Thurs., food marketing commission. p. 11806
18. ADJOURNED until Mon., June 1. p. 11827

ITEMS IN APPENDIX

19. BEEF IMPORTS. Rep. Keogh inserted National Trade Policy, Inc., statement opposing restrictions on imports of beef and beef products. pp. A2874
20. FORESTRY. Rep. Johnson, Calif., inserted a speech by Edward P. Cliff honoring John Muir during dedication of a new wilderness area. pp. A2875-6
21. MARKET NEWS SERVICE. Rep. Curtis, Mo., inserted an article criticizing the AMS market news service. pp. A2878-9
22. AWARDS. Reps. Meader and Berry inserted an article criticizing Horace Godfrey award. pp. A2883, A2896
23. AUTOMATION. Rep. Ryan, N. Y., inserted articles, "Automation: Chill or Challenge?" pp. A2862-4, A2868-9, A2872-3
24. OPINION POLL. Rep. McLoskey inserted his opinion poll including items relating to this Department. p. A2867
25. PERSONNEL. Extension of remarks of Rep. Nelsen criticizing "tactics" for selling to Federal employees \$100 tickets to political fund-raising affairs and inserted an article by Jerry Kluttz. p. A2881

BILLS INTRODUCED

26. DISASTER RELIEF. S. 2881, by Sen. Bartlett, to amend the Alaska Omnibus Act to provide assistance to the State of Alaska for the reconstruction of areas damaged by the earthquake of March 1964 and subsequent seismic waves; to Interior and Insular Affairs Committee. Remarks of author, pp. 11779-83
H. R. 11438, by Rep. Rivers, Alaska, to amend the Alaska Omnibus Act to provide assistance to the State of Alaska for the reconstruction of areas damaged by the earthquake of March 1964 and subsequent seismic waves; to Interior and Insular Affairs Committee.

COMMITTEE HEARINGS June 1: Agricultural appropriation bill, S. Appropriations. Wilderness preservation, H. Interior (exec). Government paperwork, H. Post Office and Civil Service.

UNITED STATES DEPARTMENT OF AGRICULTURE

Items Included in the Deficiency Appropriation Bill, 1964
as reported by the Senate Committee on Appropriations

<u>Item</u>	<u>Budget Estimate</u>	<u>House Bill</u>	<u>Senate Committee Bill</u>
Agricultural Marketing Service			
Special milk program	- -	- -	\$150,000
Agricultural Stabilization and Conservation Service:			
Expenses, ASCS (For administra- tion of the 1964 feed grain program)	\$13,600,000	\$13,600,000	13,600,000
Emergency conservation measures	12,000,000	a/	5,000,000
Forest Service:			
Forest protection and utilization:			
For fighting forest fires	13,000,000	13,000,000	13,000,000
For repair and replacement of recreational facilities and other structural improvements damaged by Alaskan earthquake	650,000	a/	650,000
Forest roads and trails (Liquida- tion of contract authorization) for relocation, reconstruction, and repair of roads, trails, and bridges damaged by Alaskan earthquake	350,000	a/	- -
<u>Total</u>	<u>39,600,000</u>	<u>26,600,000</u>	<u>32,400,000</u>

a/ Submitted to the Congress too late for consideration by the House.

July 21, 1964

14. RECLAMATION, FLOOD CONTROL. Passed as reported S. 2370, to authorize maintenance of flood and arroyo sediment control dams and related works to facilitate the Rio Grande canalization project and to authorize appropriations for this purpose. pp. 15880-1
Passed as reported H.R. 7419, to maintain flood control work on the lower Colorado River. p. 15881
15. ALASKA. Passed with amendment S. 2881, the Alaska relief bill. H.R. 11438, a similar bill which had been passed earlier under suspension of the rules, was tabled. pp. 15909-13
16. AUTOMATION. Passed by a vote of 325 to 75, under suspension of the rules, H.R. 11611, to establish a National Commission on Technology, Automation, and Economic Progress. pp. 15922-29
17. VEHICLES. Passed under suspension of the rules H.R. 1341, to require passenger-carrying motor vehicles purchased for use by the Federal Government to meet certain safety standards. pp. 15939-40
18. MILITARY CONSTRUCTION. Received the conference report on H.R. 10300, to authorize certain construction at military installations. (H. Rept. 1558). pp. 15913-22
19. COTTON. Rep. Waggoner inserted an article criticizing the closing of the New Orleans Cotton Exchange. p. 15948
20. TRANSPORTATION. Rep. Fallon inserted a letter "summarizing the progress of certain areas toward meeting the transportation planning requirements of the 1962 Federal-Aid Highway Act." p. 15950
21. SUGAR QUOTAS. Rep. May inserted several articles urging support of proposed amendments to the Sugar Act which would increase the basic beet sugar marketing quotas. pp. 15952-3
22. ADMINISTRATIVE LAW. The Judiciary Committee voted to report with amendment (but did not actually report) S. 1664, to provide for continuous improvements of the administrative procedure of Federal agencies by creating an Administrative Conference of the U. S. p. D570

ITEMS IN APPENDIX

23. POVERTY. Extension of remarks of Sen. Johnston commending and inserting an editorial "GOP's Poverty Program: Poverty of Everything but Higgling Opposition." p. A3764
24. EMPLOYMENT. Extension of remarks of Rep. Curtis stating that "There are indications, however, that the Johnson administration is bungling our critically important job retraining programs," and inserting an article on the "ineffectiveness" of the present programs. p. A3766
25. TAXES. Extension of remarks of Rep. Curtis expressing doubt as to how much of the recent expansion in the economy can be attributed to the tax cut and inserting articles on the subject. p. A3770, A3774

26. RECREATION; HEALTH. Extension of remarks of Rep. Edwards stating that the problem of keeping recreational areas from becoming health hazards is plaguing all levels of government and inserting an article, "The Role of Health and Sanitation In Recreation Development." pp. A3774-5
27. FARM PROGRAM. Rep. Natcher inserted Sen. Humphrey's speech before the Ky. State Convention of Young Democrats in which he commended the administration's farm program, housing and proposed poverty programs. pp. A3776-7
28. FARM LABOR. Rep. Pepper inserted his article, "The Migrant In America." pp. A3782-3
Rep. Teague inserted an article, "The Ending of the Bracero Program Will Create a Critical Agricultural Dilemma." pp. A3787-8
29. ELECTRIFICATION. Rep. Burton inserted two articles on the development of water and power resources in Calif. pp. A3793-5
30. FOREIGN AGRICULTURE. Extension of remarks of Rep. Fraser inserting an article describing how cooperatives play an important role in aiding underdeveloped countries, with special reference to agricultural development. pp. A3798-800
31. INFORMATION. Extension of remarks of Rep. Moss commending this Department's development of new information procedures and inserting a letter announcing the expanded public access procedure. pp. A3803-4
32. FOREIGN AID. Extension of remarks of Rep. Casey expressing concern "over the competition we are building abroad under the foreign aid program for our American workers and our industries," with special reference to the textile industry. pp. A3805-7

BILL INTRODUCED

33. LANDS. H.R. 11961 by Rep. Aspinall, to amend the act of February 28, 1958, relating to the withdrawal reservation, or restriction of public lands, and for other purposes; to the Committee on Interior and Insular Affairs.

0

COMMITTEE HEARINGS JULY 22:

Agricultural appropriations, S. Appropriations.
Foreign aid appropriations, S. Appropriations (exec).
Housing bill, S. Banking and Currency (exec).
Amendments to Administrative Procedure, S. Judiciary.
H. Agriculture on pending business (exec).
Appalachian bill, H. Public Works.
Poverty bill, H. Rules.
FPC regulation of REA cooperatives, S. Commerce (Clapp, REA, to testify).

o o o

Digest of CONGRESSIONAL PROCEEDINGS

OFFICE OF
BUDGET AND FINANCE

(For information only;
should not be quoted
or cited)

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

UNITED STATES DEPARTMENT OF AGRICULTURE

Washington, D. C. 20250

Official business

Postage and fees paid

U. S. Department of Agriculture

Issued July 24, 1964

For actions of July 23, 1964

88th-2nd; No. 141

CONTENTS

Adjournment.....15	Farm labor.....36	Lumber imports.....32
Administrative law.....9	Farm program.....33	Natural resources.....28
Alaska relief.....22	Fiscal policy.....25	Opinion poll.....34
Appropriations.....8,23	Fish.....21	Patents.....13
Balance of payments..12,24	Food additives.....38	Pay.....3
Commission.....40	Food prices.....20	Personnel.....3,31
Cotton.....31	Food stamps.....7	Poverty.....5,16,30
Dairy.....39	Foreign trade.....4,12,24	Reclamation.....10
Dual employment.....2	Human resources.....40	Recreation.....1,19
Education.....11	Irrigation.....27	Stockpile.....17
Electrification.....6	Indiana Dunes.....18	Taxation.....26
Employment.....29	Legislative program....14	Wheat.....4,35,37
Expenditures.....17	Loans.....19	

HIGHLIGHTS: Senate passed poverty bill. House passed land-water conservation fund bill. Rep. Jones, Mo., objected to concurrence in Senate amendments to food stamp bill, and Rep. Gross objected to sending the bill to conference. Rep. Gross objected to sending pay bill to conference. Sen. Hartke said food prices are "cheap-er." Sen. Williams, Del., criticized FHA loan policies. Reps. Nelsen and Findley urged investigation of suspected shipment of U.S. wheat to Cuba by Russia.

HOUSE

1. RECREATION. Passed with amendments H. R. 3846, to establish a land and water conservation fund to assist the State and Federal agencies in meeting present and future outdoor recreation demands and needs of the American people. pp 16265-303

Agreed to amendments as follows:

By Rep. Morris, to make the bill effective Jan. 1, 1965. pp. 16265-6

By Rep. Aspinall, to prevent more than 2 years' accumulation of funds. p. 16292

By Rep. Gross, to prohibit issuance of free passes to Congressmen and Government

officials. p. 16299

Rejected amendments as follows:

- By Rep. Fuqua, to encourage development of existing facilities rather than acquisition of additional recreation lands, by a 42-59 vote. pp. 16266-74
- By Rep. White, to prohibit the charging of entrance fees; by a 57-86 vote. pp. 16277-92
- By Rep. Fallon, to eliminate title II, relating to transfers to and from the fund. pp. 16292-3
- By Rep. Cooley, to provide that "funds appropriated or allotted pursuant to this Act for use within the national forest system may be used for acquisition only as hereafter authorized by law and for recreational development," by an 88-88 vote. pp. 16293-8
- By Rep. Roberts, Tex., to delete provisions on surplus-property sale proceeds going to the fund. p. 16298
2. DUAL EMPLOYMENT. Agreed to various Senate amendments to H. R. 7381, to simplify, modernize, and consolidate the laws relating to employment of civilians in more than one position and the laws concerning the civilian employment of retired members of the armed services. Disagreed to one amendment which would place certain ceilings on the amount of combined military retired pay and civilian compensation to be received by retired military personnel employed in civilian positions. pp. 16260-1, 16262
3. PAY; PERSONNEL. Rep. Gross objected to Rep. Murray's request to send to conference H. R. 11049, the Federal pay bill. p. 16262
4. FOREIGN TRADE. Rep. Nelsen inserted a statement by Veterans of Foreign Wars urging an immediate investigation of reports of Russia's sending U. S. wheat to Cuba. pp. 16306
- Rep. Nelsen inserted an article critical of the new wheat bill and urging that a more effective job be done for all concerned, "from farm to table." p. 16307
- Rep. Findley inserted his letter to the President urging him to halt further Communist trade credits pending investigation of suspected transshipment of wheat to Cuba by Russia. p. 16308
- Rep. Ashbrook inserted a letter from a radio operator indicative of Russia's transshipping of wheat to Cuba. p. 16321
5. POVERTY. Rep. Frelinghuysen criticized the poverty bill, stating that it "has been hastily drafted" and "not adequately considered" by the committees, and urged postponing its consideration until next year. pp. 16307-8
6. ELECTRIFICATION. Rep. Langen inserted his testimony before the Senate Commerce Committee favoring S. 2028, to amend the Federal Power Act so as to prohibit jurisdiction of the FPC over nonprofit cooperatives. p. 16308
7. FOOD STAMP PROGRAM. Rep. Jones objected to Rep. Cooley's request for concurrence in Senate amendments to H. R. 10222, the food stamp bill, and Rep. Gross objected to sending the bill to conference. pp. 16262-5
8. TREASURY-POST OFFICE AND EXECUTIVE OFFICE APPROPRIATION BILL, 1965. Received the conference report on this bill, H. R. 10532 (H. Rept. 1576). pp. 16321-23
9. ADMINISTRATIVE LAW. The Judiciary Committee reported with amendment S. 1664, to provide for continuous improvement of the administrative procedure of Federal agencies by creating an Administrative Conference of the United States (H. Rept. 1565). p. 16323

ESTABLISHING AN ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

JULY 23, 1964.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. WILLIS, from the Committee on the Judiciary, submitted the
following

R E P O R T

[To accompany S. 1664]

The Committee on the Judiciary, to whom was referred the bill (S. 1664) to provide for continuous improvement of the administrative procedure of Federal agencies by creating an Administrative Conference of the United States, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill do pass.

The amendments are as follows:

AMENDMENTS TO S. 1664

1. On page 3, line 10, change the period to a comma and add:
except that it does not include any military, naval, or foreign
affairs function of the United States.
2. On page 4, line 6, change the period to a comma and add:
which shall consist of not more than 91 nor fewer than 75
members appointed as set forth in subsection (b) of this sec-
tion.
3. On page 5, strike out lines 6 through 15 and insert in lieu thereof
the following:

(6) no more than 36 other members appointed by the
Chairman, with the approval of the Council, for terms of
two years: *Provided*, That the number of members appointed
by the Chairman shall at no time be less than one-third nor
more than two-fifths of the total number of members. Such
members shall be selected in a manner which will provide

broad representation of the views of private citizens, and utilize diverse experience, and shall be members of the practicing bar, scholars in the field of administrative law or government, or others especially informed by knowledge and experience with respect to Federal administrative procedure.

4. On page 6 strike out lines 4 through 7, and reletter subsections "(c)" and "(d)" to "(b)" and "(c)" respectively.

On page 6, line 3, after "programs" change the semicolon to a comma and insert the following:

and make recommendations to administrative agencies, collectively or individually, and to the President, the Congress, or the Judicial Conference of the United States, in connection therewith, as it deems appropriate;

5. On page 7, line 11, after "President" insert the following:

, of whom not more than one-half shall be officials or personnel of Federal regulatory agencies or executive departments. Members other than the Chairman shall be appointed

6. On page 7, line 13, after "President" strike out ", and each member" and insert in lieu thereof:

: *Provided*, That (1) the service of any member shall terminate whenever a change in his employment status would make him ineligible for Council membership under the conditions of his original appointment, and (2) except as provided in item (1), above, any member whose term has expired

7. On page 9, line 21, after "desirable" change the semicolon to a period and strike out the remainder of the sentence, lines 21 through 23.

8. On page 10, strike out lines 3 through 9.

9. On page 10, line 12, after "necessary" insert the following: " , not to exceed \$250,000,".

PURPOSES OF THE AMENDMENTS

Amendment No. 1 excludes military, naval, and foreign affairs functions of the United States from the definition of "administrative program," in accordance with testimony at the hearing that it was not contemplated that the Conference should have any jurisdiction in those areas. Apart from this amendment, the bill affords a broad jurisdictional scope for the studies of the Conference. The committee expects the Conference, nevertheless, to concentrate its efforts in areas of general importance.

Amendments Nos. 2, 3, 5, and 6 place limits on the total number of Conference members and assure that Government employee members shall preponderate, but not overwhelmingly. Thus, amendment No. 2 provides that the Conference shall consist of not more than 91 nor fewer than 75 members. As it came from the Senate, the bill contained no limitations of this character. The committee recognizes the advantages of flexibility but believes that some outside limits on the number of Conference members are nevertheless desirable. The limits set by this amendment will provide a membership comparable in

size to that of the temporary Administrative Conference established by President Kennedy.

Amendment No. 3 provides that non-Government Conference members appointed by the Chairman with the approval of the Council shall not exceed 36 in number and shall not be less than one-third nor more than two-fifths of the total number of Conference members. As introduced, S. 1664 provided that the Conference should be composed "predominantly" of Federal officials and personnel but did not provide a ratio. In the Senate, the requirement of preponderance was deleted. On the basis of testimony given by witnesses at the hearing the committee believes that the Conference should and will be composed preponderantly of Government personnel. Here again, moreover, the committee is of the opinion that the bill should set flexible but specific limits governing the ratio of Government to non-Government members. The range provided by the amendment will produce a ratio similar to that of the temporary Administrative Conference established by President Kennedy.

Amendment No. 5 provides that not more than one-half of the 10 members of the Council to be appointed by the President shall be Government personnel. The ratio of Government to non-Government members of the Council, of which the Chairman of the Conference is also to serve as Chairman, would thus be six to five. This ratio, again, corresponds to that of the Council of the Kennedy Administrative Conference.

Amendment No. 6 assures preservation of the ratio established by amendment No. 5, by providing that the services of a Council member shall terminate whenever a change in his employment status would make him ineligible for Council membership under the conditions of his original appointment.

Amendment No. 4 would add the language of former subsection (b) to subsection (a). Its purpose is to make clear that the scope of Conference recommendations is to be confined to those areas in which the Conference is authorized to study; namely, the efficiency, adequacy and fairness of administrative procedure.

Amendment No. 7 eliminates the requirement that the Conference report on agency compliance with its recommendations. The committee was concerned lest this requirement be considered to attribute the weight of law to Conference findings. It believes that this requirement should not be contained in the bill since the purpose of the legislation is to establish machinery through which to formulate, not to impose, recommendations designed to improve administrative procedure.

Amendment No. 8 would strike out section 6(e) of the bill. It has two purposes:

(a) It eliminates a requirement that the Conference member shall participate in his "individual capacity and not as a representative of any governmental or nongovernmental organization." The committee was concerned lest this requirement be thought to prohibit agency personnel or, for that matter, non-Government personnel from recognizing problems encountered by their own agency or outside organizations. While the committee expects conference members to exercise intellectual independence, it believes it best to omit from the bill any instruction on this point.

(b) Amendment No. 6 also removes a conflict-of-interest exemption that is not needed. The bill states that non-Government Conference

members shall be "special Government employees" within the meaning of the conflict-of-interest statute. However, existing law already provides that persons hired to work less than 130 days in any year are "special Government employees" and, as such, subject to less rigorous conflict-of-interest prohibitions than regular employees (18 U.S.C. 202, 203, 205, 207, 208, and 209). Inasmuch as non-Government Conference members are expected to be appointed to work substantially less than 130 days per year, the exemption is not needed by them. On the other hand, in the unlikely circumstance that one or more such Conference members should be appointed to work more than 130 days in a year, no reason appears why they should be dealt with more leniently as to conflict of interest than persons similarly appointed to other Government posts.

Amendment No. 9 would limit the amount of annual appropriations to the Conference to \$250,000.

PURPOSE OF THE BILL AS AMENDED

The purpose of S. 1664 is to provide permanent machinery whereby the Federal agencies, with assistance from non-Government authorities on administrative practice, will be able to formulate recommendations to improve Government procedures, cutting down time and costs, while preserving due process of law. A permanent Conference will provide continuity for the kind of work performed by the two temporary Administrative Conferences appointed by President Eisenhower and President Kennedy respectively. The Conference would stand in similar relationship to the agencies as the Judicial Conference stands to the Federal courts.

PRINCIPAL PROVISIONS OF S. 1664 AS AMENDED

S. 1664 would create a permanent Administrative Conference of the United States. The basic function and power of the Conference would be to study procedural problems and make recommendations for improvement. The recommendations of the Conference would go to the President, the Congress, and/or the Judicial Conference of the United States. The Administrative Conference would have no power whatever to enforce its own recommendations.

Under S. 1664, as amended, the Conference would aggregate between 75 and 91 members (Sec. 4(a)) and would consist of a Chairman, Council, and Assembly (Sec. 6(b)). The Chairman of the Conference would be the only full-time salaried member. He would be appointed by the President for a 5-year term, by and with the consent of the Senate, and would receive compensation at the highest rate paid to the Chairman of a regulatory board or commission (\$20,500 at this writing). The Chairman would be the chief executive of the Conference with powers and duties specified in section 6(c).

The Council would comprise the Chairman of the Conference, who would also serve as Chairman of the Council, and 10 other members appointed by the President for staggered 3-year terms. Under the bill as amended, not more than one-half of these appointees would be officials or personnel of Federal regulatory agencies or executive departments. The remaining five would not. The functions of the Council, set forth in section 6(b), would be to set the time, place, and agenda

of plenary meetings and otherwise to perform duties of the type that characterize an executive committee.

The main body of the Conference would be the Assembly, consisting of the Chairman, the Council, and a flexible number of other members. These would include the Chairman of each regulatory agency (or a person designated by such agency) and the head of each executive department or other administrative agency designated by the President (or a person designated by the head of such department or agency). They would also include other agency personnel and other non-Government personnel. The non-Government members would be appointed by the Chairman with the approval of the Council with a view to providing broad representation of the viewpoints of private citizens and utilizing diverse experience. It is intended that these members represent a wide variety of business, investment, labor and management interests in the private sector, and include scholars in the field of administrative law, members of the practicing bar, or others especially expert with respect to Federal administrative procedure. Under the bill as amended, these would not exceed 36 in number and would not be fewer than one-third nor more than two-fifths of the total Conference membership. Within these limits, the proportion of non-Government Conference members to total Conference members will range between 39.5 and 46.7 percent. The Assembly would have ultimate authority over all activities of the Council. It would be required to meet at least once annually. Members of the Conference other than the Chairman would receive no compensation for services, but members appointed from outside the Government would be permitted to receive travel expenses, including per diem in lieu of subsistence.

The jurisdiction of the Conference would be roughly coextensive with that of the Administrative Procedure Act (5 U.S.C. 1001-1011). The committee believes that the objectives of the measure will be furthered by providing the Conference with a broad charter, but expects the Conference to refrain from dissipating its energies in obscure areas. If the hoped-for advantages of an Administrative Conference are to be realized, the Conference must concentrate on the satisfaction of felt needs for improvement of fairly general applicability.

SECTIONAL ANALYSIS

Section 1 of the bill provides that the legislation may be cited as the "Administrative Conference Act."

Section 2 contains the congressional findings and policy which underlie the bill.

Section 3 defines "administrative program," "administrative agency," and "administrative procedure." (Section 5 authorizes the Conference to study the administrative procedure used by administrative agencies in carrying out administrative programs.)

Section 3(a) as amended declares that "administrative program" includes any Federal function which involves protection of the public interest and the determination of rights and obligations of private persons through rulemaking, adjudication, licensing, or investigation as those terms are used in the Administrative Procedure Act (5 U.S.C. 1001-1011), but does not include any military, naval, or foreign affairs function of the United States.

Section 3(b) defines "administrative agency" to mean any authority as defined by section 2(a) of the Administrative Procedure Act.

Section 3 (c) defines "administrative procedure" to mean procedure used in carrying out an administrative program. The definition prescribes that the term shall be broadly construed to include all aspects of agency organization, procedure, or management which may affect the equitable consideration of public and private interests, the fairness of decisions, the speed of action, and the relationship of operating methods to judicial review. It is provided, however, that the term shall not be construed to include the scope of agency responsibility or matters of substantive policy committed by law to agency discretion.

Section 4(a) as amended establishes the Administrative Conference of the United States, to consist of not more than 91 nor fewer than 75 members.

Section 4(b)(1) calls for the appointment of a full-time Chairman by the President, for a 5-year term, by and with the consent of the Senate. The Chairman is to receive compensation at the highest rate applicable to the chairman of an independent regulatory board or commission.

Section 4(b)(2) provides that the chairman of each independent regulatory board or commission or a person designated by such board or commission shall be a member of the Conference.

Section 4(b)(3) provides additionally that the head of each executive department or other administrative agency designated by the President (or a person designated by such head of a department or agency) shall be a member of the Conference.

Section 4(b)(4) provides for membership by additional appointees designated by department or agency heads, when authorized by the Council.

Section 4(b)(5) provides for appointment by the President of members of the Council who are not otherwise members of the Conference.

Section 4(b)(6) as amended provides for the appointment by the Chairman with the approval of the Council for terms of 2 years, not more than 36 members, provided that the number of members so appointed shall not be less than one-third nor more than two-fifths of the total number of members. It is provided that these members shall be elected in a manner which will provide broad representation of private views and which will utilize diverse experience. The members so appointed are to be members of the practicing bar, scholars in the field of administrative law or government, or others especially expert with respect to Federal administrative procedure, including those who represent a variety of business, investment, labor, and management interests in the private sector.

Section 4(c) provides that members of the Conference other than the Chairman shall receive no compensation for service, but members appointed from outside the Federal Government will be allowed travel expenses, including per diem in lieu of subsistence.

Section 5 of the bill prescribes the duties and powers of the Conference, as follows:

(a) to study the efficiency, accuracy, and fairness of the administrative procedure used by administrative agencies in carrying out administrative programs; and to make recommendations, in

connection therewith, to agencies and to the President, the Congress, or the Judicial Conference;

(b) to arrange for interchange of information; and

(c) to collect information and statistics and publish such reports as it deems useful for improving administrative procedure. The Conference would have no power to enforce its recommendations.

Section 6 of the bill prescribes the organization of the Conference.

Section 6(a) provides that the membership of the Conference meeting in plenary session shall constitute the Assembly, which shall have ultimate authority over all activities of the Conference. The Assembly will have power to adopt such recommendations as it deems appropriate for improving administrative procedure, and to adopt bylaws and regulations consistent with the legislation for carrying out the functions of the Conference. Provision is made that any member or members who disagree with the recommendations adopted by the Assembly shall have the privilege of submitting dissenting opinions and alternate proposals which shall accompany the Conference recommendation in any publication or distribution thereof.

Section 6 (b) as amended provides for a Council composed of the Chairman of the Conference, as Chairman, and 10 other members appointed by the President for staggered 3-year terms, of whom not more than one-half are to be officials or personnel of Federal regulatory agencies or executive departments. The Council would have power to (1) fix the time and place and agenda of plenary sessions of the Conference, and the obligation to call at least one such session each year, (2) propose bylaws and regulations to the Assembly, (3) make recommendations to the Conference upon any germane subject, (4) receive and transmit with its views reports and recommendations of the Committees, (5) designate a presiding officer of the Council in the absence or incapacity of the Chairman or Vice Chairman, (6) designate additional officers as deemed desirable, (7) approve or revise the Chairman's budgetary proposals, and (8) exercise such other powers as the Assembly may delegate to it.

Section 6(c) defines the office of the Conference Chairman. The Chairman is to be the chief executive of the Conference with power to (1) inquire into matters for Conference consideration, (2) be the spokesman for the Conference in relations with Government branches and agencies and outside persons and organizations, (3) request information from agency heads, which information shall be supplied to the extent provided by law, (4) recommend to the Council appropriate subjects for Conference action, (5) with approval of the Council, appoint members of committees, (6) prepare budget estimates for approval of the Council, (7) appoint employees subject to the Civil Service and classification laws, define their duties, and supervise them, (8) rent office space in the District of Columbia, (9) provide necessary services for the Conference, (10) organize and direct studies of the Conference and utilize experts and consultants who may be employed at rates not exceeding \$100 per diem, (11) furnish assistance and advise on matters of administrative procedure at the request of the head of any agency, and (12) exercise any additional authority delegated to him.

The Chairman is to preside at meetings of the Council and each plenary session of the Conference to which he is to make a full report concerning the affairs of the Conference. He is also to transmit to

the President and to Congress an annual report and such interim reports as he deems desirable.

Section 6(d) provides that the Chairman may designate a Vice Chairman who shall serve as Chairman in the event of a vacancy, or in the absence or incapacity of the Chairman.

Section 7 of the bill authorizes the appropriation of such sums as may be necessary, not in excess of \$250,000, to accomplish the purposes of the legislation.

COST TO THE UNITED STATES

It has been estimated, both by Judge Prettyman, who was Chairman of the last temporary Administrative Conference, and by the Bureau of the Budget that the total cost of the Conference will be approximately \$250,000 per annum. The committee notes that the report of the Senate committee on S. 1664 set forth cost estimates ranging between one-quarter and one-half million dollars a year. It may be that the less definite and higher estimates presented in the Senate report result from the failure of the bill, as it passed the Senate, to contain any limit on the total number of Conference members. In any event, the committee shares the conviction of the Senate Committee on the Judiciary that "the Conference will return this cost many, many times over in savings to the taxpayers through savings to the administrative agencies and directly to the public * * *."

HISTORY OF ADMINISTRATIVE CONFERENCE

A complete history of the idea of an Administrative Conference of the United States is contained in an appendix to this report. Very briefly, however, the history as set forth in the report of the Senate Committee on the Judiciary to accompany S. 1664 is as follows:

With the expansion in the number and power of regulatory and administrative agencies, especially in the 1930's and 1940's, pressure to improve their procedures and practices grew. One result was the important Administrative Procedure Act of 1946.

Yet, as the agencies expanded and touched more and more of the Nation's economic life, and as the time and cost of proceedings increased, pressure continued to mount for machinery to study problems of administrative procedures. The pressure came from the public, the bar, the agencies themselves and from other public spirited groups.

As a result, President Eisenhower established a temporary Administrative Conference in 1954-55; it produced many worthwhile recommendations; however, many of these recommendations were never implemented.

President Kennedy established a second temporary Conference in 1961-62. It, too, produced a number of very useful recommendations, a number of which have been adopted by several agencies. One of its strongest recommendations was for the establishment of a permanent Administrative Conference of the United States. It was this recommendation to the President that prompted the Bureau of the Budget to draft S. 1664 and to suggest its introduction to Senator Long, chairman of the Senate Subcommittee on Administrative Practice and Procedure.

WIDE SUPPORT FOR LEGISLATION

The idea of a permanent Administrative Conference, along the lines of S. 1664, was widely supported in the Senate hearings held on June 12, 13, and 14, 1963, and in the hearings before Subcommittee No. 3 of this committee in March 1964.

It is believed that the Conference has the unanimous support of the regulatory agencies. The formal comments of a number of agencies are attached to this report. The following letter, signed by the Chairman of the "big seven" agencies, was received by Senator Long:

JUNE 10, 1963.

HON. EDWARD V. LONG,

Chairman, Subcommittee on Administrative Practice and Procedure of the Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR SENATOR LONG: Although our agencies will send their comments on S. 1664 in due course, before the hearings are held on this bill we wished you to know that we individually and collectively favor the establishment of a permanent Administrative Conference at the earliest practicable date.

Sincerely yours,

(Signed) ALAN S. BOYD,
Chairman, Civil Aeronautics Board.

(Signed) E. WILLIAM HENRY,
Chairman, Federal Communications Commission.

(Signed) JOSEPH C. SWIDLER,¹
Chairman, Federal Power Commission.

(Signed) PAUL R. DIXON,
Chairman, Federal Trade Commission.

(Signed) LAURENCE K. WALRATH,
Chairman, Interstate Commerce Commission.

(Signed) FRANK W. McCULLOCH,
Chairman, National Labor Relations Board.

(Signed) WILLIAM L. CARY,
Chairman, Securities and Exchange Commission.

The idea of a permanent Conference has the strong support of the American Bar Association, the Federal Bar Association, the Bar Association of the District of Columbia, and a number of other very prominent legal groups.

The proposal for a permanent Administrative Conference also has the support of the Judicial Conference of the United States, the Chief Justice, the Bureau of the Budget, and a long list of Government agencies. No opposition has been registered except as to details, such as those which are involved in the committee amendments. Attached hereto and made part of this report are copies of agency reports submitted to the Senate Committee in connection with its consideration of S. 1664, as well as reports submitted to this committee by the Interstate Commerce Commission and by the Federal Trade Commission.

¹ Mr. Swidler's note: My endorsement is based on the assumption that the Administrative Conference is established along the lines proposed in S. 1664. J.C.S.

U.S. ATOMIC ENERGY COMMISSION,
Washington, D.C., July 8, 1963.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate.

DEAR SENATOR EASTLAND: This is in response to your request of June 10, 1963, for a report on S. 1664, a bill to provide for continuous improvement of the administrative procedure of Federal agencies by creating an Administrative Conference of the United States, and for other purposes.

As we understand the bill, it would establish an Administrative Conference of the United States, composed of a Chairman appointed by the President with the advice and consent of the Senate, the chairman of each independent, regulatory board or commission, certain other Federal officials, persons appointed by the President and others, for the purpose of studying Federal administrative agencies' procedures, making recommendations to such agencies and to the President, the Congress, or the Judicial Conference of the United States, and compiling and publishing reports of operating statistics as may be deemed useful in evaluating and improving the administrative process.

The Atomic Energy Commission is in full accord with the intent and purpose of S. 1664, and recommends its enactment.

As our only comment on the language of S. 1664, we suggest that in the interest of clarity section 6(c)(3) be revised to provide that requested information be supplied by agency heads to the extent "permitted by law and agency regulation." The language of the proposed section 6(c)(3), which provides that information shall be supplied to the extent "permitted by law or agency regulation," might present difficulties in actual operation, since it might be read as authorizing in general terms agency regulations permitting disclosure notwithstanding possible incompatibility of such regulations with legal requirements as to protection of classified information and other confidential material. This point might in the alternative be dealt with by modifying the language to read: "except to the extent prohibited by law or agency regulation."

The Bureau of the Budget has advised that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely yours,

(Signed) GLENN T. SEABORG,
Chairman.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
Washington, D.C., July 8, 1963.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request of June 10, 1963, for a report on S. 1664, a bill to provide for continuous improvement of the administrative procedure of Federal agencies by creating an Administrative Conference of the United States, and for other purposes.

This bill would put the Administrative Conference of the United States (created by Executive Order 10934) on a statutory basis and make it permanent.

We recommend enactment of this bill.

We are advised by the Bureau of the Budget that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely,

(S) ANTHONY J. CELEBREZZE,
Secretary.

DEPARTMENT OF THE TREASURY,
Washington, D.C., June 12, 1963.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Department on S. 1664, to provide for continuous improvement of the administrative procedure of Federal agencies by creating an Administrative Conference of the United States, and for other purposes.

The Department believes it would be desirable to establish a permanent Administrative Conference of the United States and consequently favors the enactment of the proposed legislation. However, the Department recommends that the words "and the availability of funds" be added at the end of clause (3) of section 6(c) of the bill. The compilation of information necessarily entails the use of manpower and the Department feels that compliance with requests for information should be limited in terms of the availability of staff and budget.

The Department has been advised by the Bureau of the Budget that there is no objection from the standpoint of the administration's program to the submission of this report to your committee.

Sincerely yours,

(Signed) FRED B. SMITH,
Acting General Counsel.

INTERSTATE COMMERCE COMMISSION,
Washington, D.C., June 12, 1963.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR CHAIRMAN EASTLAND: This is in response to your letter of June 10, 1963, requesting comments on a bill, S. 1664, introduced by Senator Long of Missouri, to provide for continuous improvement of the administrative procedure of Federal agencies by creating an Administrative Conference of the United States, and for other purposes. This matter has been considered by the Commission and I am authorized to submit the following comments in its behalf:

In principle, we agree with the bill's overall objective to establish a continuing Administrative Conference of the United States. Accordingly, our comments will be confined to particular provisions therein which, in our opinion, appear either unclear or otherwise unsatisfactory.

At the outset, we wish to register our specific approval of section 4(b) which provides that the "Conference shall be composed preponderantly of Federal officials and personnel" and of a similar provision in section 6(b) relating to Council membership. . . . Otherwise, there always would be the possibility that outside interests could dominate operations and recommendations. So conditioned, however, we believe that the broad grant of jurisdiction conferred in the bill would enable the Conference to carry out its intended mission.

Section 6(a) vests in the Conference Assembly ultimate authority over all activities of the Conference. We assume that the authority conferred upon the Chairman by paragraph (c) of that section would be effectively controlled by the Conference Assembly. If there is any doubt as to the validity of that assumption, we believe that subsections (c)(1), (c)(2), and (c)(3) should be amended by limiting in certain respects the Chairman's power and discretion.

We assume that the committee will be advised by the Department of Justice whether the nongovernmental members of the Conference will need an exemption from the conflict of interest laws.

Subject to the foregoing comments and qualifications, we favor enactment of the bill.

Sincerely yours,

(S) LAURENCE K. WALRATH,
Chairman.

DEPARTMENT OF COMMERCE,
MARITIME ADMINISTRATION,
OFFICE OF THE ADMINISTRATOR,
Washington, D.C., July 2, 1963.

HON. EDWARD V. LONG,
Chairman, Senate Judiciary Subcommittee on Administrative Practice
and Procedure, Washington, D.C.

DEAR SENATOR LONG: Allow me to congratulate you upon your designation as chairman of the Senate Subcommittee on Administrative Practice and Procedure. This subcommittee has a most important function in overseeing the operations of the several regulatory and promotional agencies which employ formal administrative procedures and I am happy that the chairmanship is in your good hands.

As you are undoubtedly aware, statutory hearings are conducted before the agency in three specific areas: (1) Applications by steamship companies for operating-differential subsidy to permit competition with foreign carriers on a vessel operating cost parity pursuant to section 605(c) of the Merchant Marine Act of 1936, as amended; (2) applications by subsidized carriers to enter the protected domestic, coastwise, or intercoastal trades pursuant to section 805(a) of the act; and (3) applications by lumber shippers desiring to use foreign-flag vessels between ports in the United States and Puerto Rico pursuant to Public Law 87-877. Occasionally nonstatutory hearings are being held pursuant to discretionary authority. These concern applications for so-called title XI shipbuilding mortgage insurance and appeals from decisions of the Maritime Administration contracting officer in disputes arising under shipbuilding contracts.

We have a staff of two hearing examiners and six attorneys who, as required, act as public counsel in the processing of formal proceedings. The chief hearing examiner, Mr. Paul N. Pfeiffer, who is also the cur-

rent president of the Federal Trial Examiners Conference, and the Assistant General Counsel, Division of Operating Subsidy Contracts, Mr. Louis Zimmet, would be happy to discuss any problems on administrative procedure with your Mr. Fensterwald at his convenience.

The Maritime Administration has been greatly impressed by the work of the Administrative Conference in producing numerous carefully considered and well-documented reports on the subjects of licensing, rulemaking, contract appeals, functions of hearing examiners and public or staff counsel. It would appear that the reestablishment of the Administrative Conference on a permanent basis would be a desirable step in developing further improvements in the technique of administrative adjudication. The cross-fertilization of ideas stemming from an expert body composed of Government lawyers and hearing examiners, private practitioners, and law professors should serve as a catalytic agent toward the attainment of this important goal.

With renewed congratulations and best wishes for the success of your subcommittee.

Sincerely yours,

DONALD W. ALEXANDER,
Maritime Administrator.

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., June 12, 1963.

HON. EDWARD V. LONG,
*Chairman, Subcommittee on Administrative Practice and Procedure,
Committee on the Judiciary, U.S. Senate, Washington, D.C.*

DEAR SENATOR LONG: The Commission would like to take this opportunity to endorse enactment of S. 1664, a bill to provide for continuous improvement of the administrative procedure of Federal agencies by creating an Administrative Conference of the United States. Enactment of this legislation would provide the “* * * means by which agencies in the Federal Government may cooperatively, continuously, and critically examine their administrative processes and related organizational problems,” as recommended by the Honorable E. Barrett Prettyman in his letter of December 17, 1962, transmitting to the President the final report of the interim Administrative Conference of the United States.

The Commission fully supports establishment of the Administrative Conference on a permanent basis. We believe that the continuing study of procedural problems common to all Federal agencies in light of the need for maximum efficiency on the part of the Government, and of the necessity for affording fairness to those affected by governmental action—will do much to improve administrative practices.

In supporting this legislation, we note with approval several distinctive aspects of S. 1664—the high degree of autonomy of the proposed Conference, specific exclusion of the Conference from matters of substantive policy committed by law to agency discretion, and the formulation of recommended new standards of practice through mutual cooperation and only after agency-members of the Conference have been afforded an opportunity to assess the effect of such standards on their operation. We believe that these features of the bill strike a sensible balance between the divergent needs of agencies to tailor their procedures to particular operational problems and the admitted

14 ESTABLISHING AN ADMINISTRATIVE CONFERENCE OF THE U.S.

need for some means by which procedural problems can be continuously appraised and approved.

By direction of the Commission:

E. WILLIAM HENRY, *Chairman.*

FEDERAL POWER COMMISSION,
Washington, June 12, 1963.

Re S. 1664, 88th Congress, a bill to create an Administrative Conference of the United States.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: In response to your June 10 request for our views on S. 1664, we are wholeheartedly in favor of the creation of a permanent organization to improve administrative procedures. The participation of the Commission in the recently concluded Conference has aided our own efforts to revitalize our procedures. The investigations of those procedures made by the various committees of the Conference pointed up areas in which improvements were shown to be desirable and they have been adopted. The Conference also provided a forum in which procedural innovations made by one agency were evaluated and brought to the attention of other agencies, and we were gratified that some of the FPC's recent procedural reforms were recommended by the Conference for adoption by other agencies. We expect that similar studies and information would be of value in the future.

The Conference can be of considerable assistance to the executive branch and to the committees of Congress by providing a knowledgeable and impartial body to suggest and evaluate proposals for administrative improvement.

The bill, correctly, we believe, provides for a Conference without authority to direct agency action. Every agency has its own responsibilities and, as such, should be the judge of its own procedures. We think it would be a mistake to dilute the responsibility of an administrative agency for improving the dispatch of its business. This will follow the pattern of the Judicial Conference which has no power to direct action but whose recommendations to the President, the Supreme Court, and the Congress have resulted in an improvement of the judicial process. We believe an Administrative Conference established in accordance with the provisions of the bill should in time attain the stature of the Judicial Conference.

Sincerely,

(Signed) JOSEPH C. SWIDLER,
Chairman.

FEDERAL AVIATION AGENCY,
Washington, D.C., August 22, 1963.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request for comments on S. 1664, a bill to provide for continuous improvement of the ad-

ministrative procedure of Federal agencies by creating an Administrative Conference of the United States, and for other purposes.

We are in favor of this bill subject to the modifications discussed below. Those modifications, which relate solely to the question of the proper scope of the Conference's activities, rest on the assumption that the remaining portions of the bill concerning Conference membership, organization, and procedure will remain as written. If changes are made in these areas, especially in the structure of Conference membership, our suggestions for broadening the scope of the Conference would have to be reconsidered.

As an Agency represented on the last Administrative Conference, we are impressed with the need for a permanent forum for the analysis and discussion of the problems of administrative procedure. We believe the record made by the last Conference more than justifies the continuation of such an institution on a permanent basis. Thus, we are fully in accord with the recommendations as to future organization made by that Conference.

The major difference between S. 1664 and the recommendation of the last Conference lies in the limitation on the scope of the proposed Conference which is imposed by section 3(a) of the bill. The Conference recommended that the new organization "should have power to inaugurate and conduct studies of any phase of any agency's procedures, giving 'procedures' in this context the broadest meaning." This recommendation would leave with the Chairman and Council considerable discretion in the selection of appropriate matters for study.

S. 1664 defines more narrowly the kinds of administrative activities which could be studied by the Conference. The effect of section 3(a)(1) is to preclude the study of any administrative procedure in the areas of military and foreign affairs, agency management, personnel, public property, loans, grants, benefits, or contracts, except where such proceedings take the form of hearings under sections 7 and 8 of the Administrative Procedure Act, or where they result in the imposition of penalties on private persons. Section 3(a)(2) goes on to exclude administrative procedures which are subject to later trial de novo in any court, which rest on inspections tests or elections, or which involve the certification of employee representatives.

While we are sympathetic with the desire to define in some way the intended scope of the Conference, and while we recognize that some of the subject matter areas listed above will present few if any questions of appropriate concern to a Conference of this kind, we believe the limitations imposed by section 3(a) go too far.

As a matter of principle, we believe the Administrative Conference should be free to examine any agency procedures which determine or affect the rights, privileges, status, or obligations of individuals, inside or outside the Government. The limitations of section 3(a) of S. 1664 have the effect of removing from Conference consideration many procedures of this kind. Of special importance to this agency, for example, are the exclusions of formal contract appeal and personnel grievance procedures.

We understand the language of section 3(a) is intended to limit the Conference to consideration of those matters in which lawyers have traditionally been involved. There may be some question whether this is an adequately discriminating standard. In any event, the involvement of lawyers in a procedure—like any of the other indicia

than an activity has become a proper subject of administrative law—is a function of many things, including the prevailing policies of the agency, the nature of the rights or obligations being determined, and the shifting patterns of judicial response to questions of statutory and constitutional interpretation. None of these matters is easily determinable in advance. Whatever the validity of the criterion of lawyer involvement, therefore, we do not believe it or any similar standard can be implemented by language in the bill itself. In our view, the administrative process is too diverse and changeable, the judiciary too dynamic and inventive, to permit final judgments about what topics the Nation's administrative law experts might profitably study. The question of appropriate limits on the Conference should be left to the judgment and discretion of the Chairman and Council, under only general statutory standards. A standard consistent with the principle stated in the last paragraph, and interpreted with due regard to accepted internal agency prerogatives, by a Conference made up predominantly of agency heads would, we believe, confine the Conference to its appropriate sphere without limiting the contribution it might make to the mechanism of agency self-improvement in the broad area of administrative law.

If further statutory limitations on the scope of the Conference are nevertheless considered desirable, we believe they should be cast in terms of the degree of procedural formality involved rather than, as is the case in the instant bill, the subject matter of the proceeding, its statutory basis, the form of sanction to be imposed, the status of the parties, or the possibility of later review. This could be accomplished by revising the exception in section 3(a) (lines 12 through 20, p. 3) to read as follows: "any function or matter specified in section 4 (1) or (2) or section 5 (3), (5), or (6) of the act except to the extent that such function or matter consists of proceedings conducted pursuant to or in substantial conformity with section 7 of the act."

Such a provision would leave within the scope of the Conference most agency determinations of individual rights and obligations which are made through formal proceedings of the kind described in section 7 of the Administrative Procedure Act, whether or not those proceedings are technically required to be conducted under that section. Contract appeal procedures and personnel grievance procedures could be examined, for instance, when (and only when) they were conducted through formal "on the record" hearings. No reason is apparent for depriving the Nation's administrative law experts of the opportunity to study and comment on the adequacy of such formal procedures.

It has been suggested that the availability in some of these areas of later administrative or judicial review—such as that available to a contractor suing in the Court of Claims—insures the adequacy of the ultimate decision, and that study of the underlying agency procedures is therefore unnecessary. We do not agree. Full review of a given case may insure that justice is ultimately done in that case. It does not, however, go to the question of whether the agency procedures involved are well designed to produce fair, equitable, and timely determinations of the rights at stake. Where improvements at this level are possible we believe they are important and should be within the ambit of Conference study. We note, for example, that even though a contractor's case may be tried *de novo* in the Court of Claims, the feeling that an early and just determination is in the

interest of all the parties led the last Administrative Conference to adopt recommendation No. 12 which requires adversary-type hearings before the agency initially.

Finally we would recommend that the legislative history of the proposal make it clear that the provisions on member representation in the Conference (sec. 4) will not stand in the way of bylaws which provide for agency staff participation in Conference committees, where appropriate.

The Bureau of the Budget has advised that there is no objection from the standpoint of the administration's program to the submission of this report to your committee.

Sincerely,

(Signed) N. E. HALABY,
Administrator.

INTERSTATE COMMERCE COMMISSION,
March 3, 1964.

HON. EDWIN E. WILLIS,
*Chairman, Subcommittee No. 3,
Committee on the Judiciary,
House of Representatives,
Washington, D.C.*

DEAR CHAIRMAN WILLIS: This is in response to your letter of February 4, 1964, requesting comments on an act, S. 1664, to provide for continuous improvement of the administrative procedure of Federal agencies by creating an Administrative Conference of the United States, and for other purposes. This matter has been considered by the Commission, and I am authorized to submit the following comments in its behalf:

In principle, we support the overall objective of establishing a continuing Administrative Conference of the United States. Accordingly, our comments will be confined to particular provisions of S. 1664, which we deem important and of some concern to us.

In its original form, section 5(d) of S. 1664 would have authorized the Conference to "collect from administrative agencies and publish such reports of operating statistics as it deems useful for evaluating and improving administrative procedure." In the act, however, this provision has been revised to read "collect information and statistics from administrative agencies and publish such reports as it deems useful for evaluating and improving administrative procedure." The amendment represents an obvious expansion of the power of the Conference to obtain information from agencies and to evaluate particular agency proceedings.¹ However, we assume that this broad grant of authority would be exercised in accordance with a "rule of reason" so as not to impair, through excessive and unduly burdensome requests for information, the ability of an agency to make effective use of its manpower and funds in performing its primary functions.

¹ It may be argued, of course, that this amendment of sec. 5(d) is basically consistent with the authorization in sec. 5(a) for the Conference to "study the efficiency, adequacy, and fairness of the administrative procedure used by administrative agencies in carrying out administrative programs." However, in this connection, it should be noted that sec. 6(c)(3) originally empowered the Chairman of the Conference to "request agency heads to provide information needed by the Conference, which information shall be supplied to the extent permitted by law or agency regulations." This provision was amended to strike the words "agency regulations," with the result that, as stated in the Senate report at p. 4, information could be withheld from the Conference only upon statutory authority or regulations pursuant thereto.

We also observe that the last sentence of section 6(b) originally provided that: "The Chairman shall, on behalf of the Conference, transmit to the President and the Congress an annual report and such interim reports as he deems desirable." This provision was amended to add to the provision that "such reports shall set forth the compliance of the agencies with the recommendations of the Conference."

Viewed in their broadest perspective, the enlarged information-gathering and reporting powers of the Conference and its Chairman embraced in the amended bill possibly could be utilized to encroach upon the independence of the agencies subject to its provision. Of course, this possibility could be eliminated by making it clear that the powers created under the amended bill shall not be used to interfere with the traditional independence conferred by the Congress on regulatory agencies such as this Commission. While the inclusion of a qualifying provision of that sort would be a welcome improvement, we are inclined to discount such dangerous potentials as may be inherent in S. 1664 as amended. In our judgment, the independence of the regulatory agencies is so important and is so ingrained in existing law that any change in this status could be accomplished only by an affirmative and clear expression of congressional intent.

Accordingly, we do not feel compelled to object to S. 1664 as passed by the Senate and, on balance, favor its enactment.

Sincerely yours,

(S) ABE MCGREGOR GOFF,
Chairman.

FEDERAL TRADE COMMISSION,
Washington, D.C., November 15, 1963.

HON. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: While the Commission has not been requested by your committee to make a report on H.R. 7200, 88th Congress, 1st session, a bill to provide for continuous improvement of the administrative procedure of Federal agencies by creating an Administrative Conference of the United States, and for other purposes, we thought you would be interested in having the Commission's views on this proposed legislation.

As we read H.R. 7200, it is the same as S. 1664, 88th Congress, 1st session, on which the Commission has prepared a report to the chairman of the Senate Committee on the Judiciary.

It is our understanding that both bills would create an Administrative Conference of the United States which would be composed predominantly of Federal officials and personnel who are to be appointed in the manner prescribed in the bill. In addition, the Conference would also have as members private citizens, "in such number as will assure adequate representation of the viewpoints" of such citizens and "the utilization of diverse experience." The bill provides for the organization of the Conference and details its duties and powers.

The Commission favors the general approach and provisions of the subject bill, which appear to reflect a realistic accommodation of the

various proposals for establishment of an Administrative Conference of the United States on a permanent basis.

By direction of the Commission.

PAUL RAND DIXON, *Chairman*.

N.B.—Pursuant to regulations, this report was submitted to the Bureau of the Budget on November 8, 1963, and on November 14, 1963, the Bureau of the Budget advised that there is no objection to the submission of this report from the standpoint of the administration's program.

JOSEPH W. SHEA, *Secretary*.

APPENDIX I

HISTORY OF THE CONCEPT OF THE ADMINISTRATIVE CONFERENCE

(As set forth in Senate Report No. 621, to accompany S. 1664)

The general idea of an administrative conference as proposed by this committee is far from new. The history of the Administrative Conference idea is both interesting and instructive, and it has a most direct bearing upon the establishment of a permanent Conference as proposed in S. 1664.

EARLY HISTORY

The basic concept of an administrative conference was first expressed in 1950 by Clyde B. Aitchison, Commissioner of the Interstate Commerce Commission.¹ The timing of Commissioner Aitchison's statement was propitious.

In July 1949, the chairman of the Special Subcommittee of the Judiciary Committee of the House of Representatives had announced in the course of hearings relating to delays in the trial of certain cases: "* * * we have communicated with Chief Justice Vinson and we have asked him to request the Senior Council of Circuit Judges, when they meet in September, to endeavor to develop some timesaving procedures, procedures especially in the antitrust laws." Thereafter, at its September 1949 meeting, the Judicial Conference of the United States adopted a resolution which, in part, read:

"The Conference was of the opinion that experience has indicated the desirability of examining the present procedure governing controversies arising under the antitrust laws and the various statutes establishing regulatory agencies with a view to advancing their effective, expeditious, and economic disposition, and authorized the designation of a committee of the conference to consider [means by which these ends might be achieved]."

The Chief Justice appointed a committee of 10 judges, Circuit Judges Stone, Magruder, Augustus Hand, Lindley, and Prettyman, and District Judges Chesnut, Kloeb, Leahy, Rifkind, and Yankwich.

At its first meeting the committee took action which is reflected in the following extract from a letter from the committee to the Chief Justice:

"The committee was troubled by the assignment to it of the administrative agency phase of the general problem. The members of the committee were of the view that their own limited experience in

¹ See his address to the ICC Practitioners Association, 18 ICC Prac. J., pp. 118, 120-122 (1950).

this field would place a limited value upon their recommendations in the field.

"After careful discussion the committee unanimously instructed me to suggest respectfully to you the appointment of a second section to this committee, to be composed of persons familiar with the problems of the administrative agency procedure; for example, members or general counsel of commissions or experienced private practitioners before the agencies, or both."

Thereupon the Chief Justice authorized the appointment of "an Advisory Committee, composed of persons in and out of the Government familiar with the problems of administrative agency procedure." On June 20, 1950, such an Advisory Committee was appointed. It had 12 members² including 3 members of administrative agencies, 3 general counsel for agencies, 2 private practitioners who had then recently left membership on administrative agencies, and 3 lawyers in the general practice with prior administrative law experience.

This Advisory Committee spent 9 months in "a firsthand investigation of the causes of excessive delay and expense and unduly voluminous records in the procedures of Federal regulatory agencies, and possible remedies therefor." On March 30, 1951, it submitted its report, which contained a dozen recommendations. The first was for an "Administrative Agency Conference." This idea initially had been suggested by Commissioner Clyde Aitchison the previous year. The Advisory Committee said:

"The regulatory agencies themselves must solve this problem [of excessive delay and expense and unduly voluminous records]. The solution may best be accomplished by the cooperation of all agencies involved; in fact, a cooperative approach, with mutual exchange of experience and suggestions, seems imperative for the most efficient functioning of the administrative agencies. With such an approach to this problem in mind, your committee's primary recommendation is that the Judicial Conference suggest to the President that he call or cause to be called, a conference of representatives of the administrative agencies having adjudicatory and substantial rulemaking functions, for the purpose of devising ways and means for achieving the objectives with which this committee is concerned."

The Judicial Conference committee to which this report was addressed approved it, and the Judicial Conference of the United States itself approved it. At its meeting in September 1951, the Judicial Conference of the United States adopted a resolution as follows:

"Upon consideration, the Conference ordered that the committees' suggestions and recommendations with respect to the call of a conference of representatives of the administrative agencies having adjudicatory and substantial rulemaking functions, be approved with this additional recommendation:

"That representatives from the Federal judiciary and the bar as may be desired be designated to attend said Conference and to serve in such capacity as the President may determine."

Chief Justice Vinson duly transmitted this suggestion to the President.

² E. Barrett Prettyman, chairman; Clyde B. Aitchison, John Carson, Benedict P. Cottone, Robert K. McConnaughey, E. L. Reynolds, Paul L. Styles, Preston C. King, Jr., Joseph J. O'Connell, Jr., Bradford Ross, John L. Sullivan, Roger J. Whiteford.

TEMPORARY CONFERENCE UNDER PRESIDENT EISENHOWER .

On April 29, 1953, President Eisenhower issued a document addressed "To All Executive Departments and Administrative Agencies." He said, in part: "Accordingly, I am happy to call a conference of representatives of the departments and agencies, and of the judiciary and the bar, for the purpose of studying the problems thus described." The President requested each department and agency having adjudicatory and rulemaking functions to designate a representative to meet with other such representatives in a conference. With the agreement of the Chief Justice the President invited three Federal judges to participate. The President also asked 3 trial examiners and 12 practicing lawyers to participate.

Thus the Conference was composed of 75 members, including 57 members designated by agencies. This Conference came to be known as the President's Conference on Administrative Procedure. It was organized as follows: a "Committee on Organization and Procedure," consisting of six members, was appointed and acted as an executive committee, planning the organization and the rules of procedure. Nine other standing committees were appointed: prehearing, pleadings, evidence, trial problems, hearing officers, judicial review, uniform rules, office of Federal administrative procedure, and style.

These committees conducted studies of the subjects assigned to them by the Conference. Some of them conducted extensive hearings. They summoned to their assistance prominent experts in the field, who were denominated consultants. The committees prepared reports, some of which were extensive and contained much basic material. These reports were circulated to the members of the Conference but were not debated or acted upon by the Conference. The committees also submitted "recommendations," which were direct and succinct and based upon or drawn from reports. These recommendations were debated and adopted or rejected. When adopted, they were referred to the Committee on Style for editorial revision.

The Conference held four plenary sessions, June 10, 11, 1953, November 23, 24, 1953, October 14, 15, 1954, and November 8, 9, 1954. It adopted 35 recommendations, 2 addressed to the President, 3 to the Judicial Conference, 7 to the Civil Service Commission, 1 to the General Services Administration, and 22 of the various Government agencies. It adopted a final report, which was duly transmitted to the President and also published. As its final action the Conference adopted a resolution recommending that a similar conference be established on a permanent basis. President Eisenhower acknowledged receipt of the report on March 3, 1955, and said, in part:

"The work of the Conference has shown that an exchange of experience and views between Federal administrators and between them and members of the practicing bar and the judiciary produces useful results. I am confident that means will be devised for continuing such cooperative effort."

The resolution respecting a permanent Conference was referred by the President to the Attorney General.

Thereafter several parallel series of events developed. The Judicial Conference of the District of Columbia Circuit, the American Bar Association, the Federal Bar Association, and the chairmen of the large independent agencies all studied and took action in respect to

the proposal for a permanent Conference of the agencies respecting their procedures and other problems.

The Judicial Conference of the District of Columbia Circuit consists of all the Federal judges on the district court and the circuit court of appeals, various Federal and municipal law officials, and about 120 members of the practicing bar who are selected by a committee of judges and lawyers. Several months before a meeting of the Conference its Committee on Arrangements selects topics for debate, consideration, and action. Study groups, usually composed of 20 or 25 members each, are assigned to study and present recommendations on these topics. The membership of the 1959 Conference included a number of Government attorneys and a large number of attorneys engaged in practice before the administrative agencies.

In the fall of 1958, in preparing for the Judicial Conference of the District of Columbia Circuit to be held in the spring of 1959, the Committee on Arrangements listed as one topic for the consideration of the Conference "Problems of Administrative Law." This study group presented three reports. All reports recommended the establishment of a permanent Conference on Administrative Procedure but they differed on machinery for implementation.

One report recommended that the Attorney General call together a group to formulate plans for the Conference and to make appropriate recommendations to the President for its establishment. Another report recommended that the President call an interim conference pending enactment of a statute, and that the permanent Conference be established by legislation. The third report recommended that the Chairmen of the seven large independent agencies meet and establish the Conference.

After extensive debate, the Judicial Conference of the District of Columbia Circuit adopted the proposal that an interim Conference be established by the President and a permanent Conference be established by an act of the Congress. That recommendation was transmitted to the Judicial Conference of the United States, which at its September 1959 meeting appointed a committee to consider the matter. At its meeting in March 1960, the Judicial Conference of the United States adopted the following resolution:

"Resolved, That this Conference approves the establishment of a permanent Conference on the procedures of executive departments and administrative agencies in adjudications and rulemakings, in which Conference representatives of the departments, the agencies, and the practicing bar would participate, for the purpose of exchanging information and making recommendations to the several agencies and departments for the improvement of the administration of justice by them. The Chief Justice, as Chairman of this Conference, is authorized to communicate this action, at such times as he deems appropriate, to the President and to such other officers, including Members of the Congress, as may be concerned with this subject from time to time; and the Chief Justice is further authorized to implement this action further in such other ways as he may deem appropriate."

Chief Justice Warren thereafter transmitted the resolution, together with his own strong personal recommendation for such a Conference, to President Eisenhower.

In the meantime, coincident with the study undertaken by the Judicial Conference of the District of Columbia Circuit, a special committee of the Federal Bar Association began a study of the matter

and made a report to the national council of that association. On May 20, 1959, the day before the meeting of the Judicial Conference of the District of Columbia Circuit, the National Council of the Federal Bar unanimously adopted a resolution which endorsed the concept of a permanent Conference, and called upon the Attorney General to invite a committee of representatives of the agencies and the practicing bar to formulate plans to be presented to the President for such a Conference.

On September 24, 1959, Chief Justice Warren addressed the annual convention of the Federal Bar Association in a speech which was one of the key events in the development of administrative law in recent years. Among other things he said:

"Today it is generally recognized that far too many administrative proceedings in Federal agencies are also subject to excessive and unnecessary delay. Perhaps even more discouraging in the agency proceedings is the fact that meaningful information on the state of the backlog, and the extent of the delay, is not even available.

"This is true because there presently exist few criteria or standards for determining how long it should normally take to get final agency action on the ordinary administrative case.

* * * * *

"If there is anything which symbolizes the disillusion of the American people—of the lay public—in our legal system, it is the factor of unconscionable delay.

* * * * *

"Turning briefly to the legal services performed in the administrative agencies, I know that many of you are aware that last year 21 Federal administrative agencies terminated in excess of 25,000 proceedings, and that the trend is continually upward * * *.

"For this reason, I am particularly glad to inform you that the Judicial Conference of the United States, at its meeting last week, approved in principle the proposal for a permanent Conference on Administrative Procedure—which the Federal Bar Association and judges have been advocating.

"Such a conference—composed basically of agency representatives, but with practicing lawyers and other participants as well, is sorely needed to conduct continuing and practical studies of ways to eliminate undue delay, expense, and volume of hearing record; to develop uniform rules of practice and procedure; and generally to promote greater efficiency and economy in the administrative process."

Also in the meantime, the council of the Administrative Law Section of the American Bar Association, at its Miami meeting in August 1959, adopted a resolution endorsing the idea of a permanent Conference on Administrative Procedure: an interim conference to be set up by the President and a permanent conference to be created by the Congress. This, we may note, was the same as the view taken by the Judicial Conference of the District of Columbia Circuit. That resolution was adopted by the section, transmitted by special order to the house of delegates, and there adopted. Transmission of the resolution to the Judicial Conference of the United States and to the President was authorized. At the same time the house of delegates designated the council of the administrative law section and the special committee on procedure to act jointly in the preparation of legislation on the subject. Proposed legislation was prepared

for presentation to the midwinter meeting of the house of delegates in Chicago in February 1961, but action on that report was postponed until the August 1961 meeting.

In February 1960, the Subcommittee on Legislative Oversight, Committee on Interstate and Foreign Commerce of the House of Representatives, of which Congressman Oren Harris was the chairman, submitted an interim report (H. Rept. 1258, 86th Cong., 2d sess.) in which attention was called to the steps being taken in the process of the formulation of a proposed permanent group to study the overall problems of the agencies. The subcommittee said: "Current thinking is that this new organization, to be known as the Conference on Administrative Procedures, will perform, in the administrative law field, the present functions in the judicial field which are performed by the Conference on Judicial Procedures."

The chairmen of six of the large independent agencies (Civil Aeronautics Board, Federal Trade Commission, Federal Power Commission, Federal Communications Commission, Securities and Exchange Commission, and Interstate Commerce Commission), in the meantime, jointly prepared a letter to the President. This letter made clear the need for a permanent Administrative Conference, and suggested the composition of such a Conference. The letter further proposed that an Organization Committee prepare an agenda for the Conference and suggested further that consideration of legislation not be undertaken until after organization of the Conference and that recommendations respecting legislation be adopted by the Conference itself. In this letter it was proposed that eight of the Cabinet departments, the Civil Service Commission, the Atomic Energy Commission, the Federal Aviation Agency, and the seven large independent agencies send representatives to the Conference, and that certain bar associations nominate members. "Such associations," said the letter, "might well include" the American Bar, the Federal Bar, the ICC Practitioners, the Motor Carrier Lawyers Association, the Federal Power Bar, the Federal Communications Bar, the Federal Trial Examiners' Conference, "and similar organizations." That letter was transmitted to the President on August 25, 1960.

President Eisenhower on August 29, 1960, concurred in the proposal and authorized arrangements for the initial organization of such a Conference. A committee, which came to be known as an Organization Committee, was thereupon appointed and after several weeks of work completed a proposed set of bylaws.

The Conference envisioned by that set of bylaws was an assembly-like body of 65 delegates, 40 of whom would be from the Government and 25 from outside the Government. One delegate would be designated by the Secretary of each of nine Cabinet departments, two from each of the seven big agencies, two trial examiners, and six to be appointed at large by the Chairman, with the approval of the Executive Committee. The plan envisioned that five delegates be named by the president of the American Bar Association, two by the president of the Federal Bar Association, eight from the practicing bar, five from university faculties, and five experts in nonlegal fields, all to be named by the Chairman, with the approval of the Executive Committee. The plan provided for standing committees, for a permanent secretariat, and for liaison with the Congress through the naming of six representatives, three from each House, by the Vice President and Speaker, respectively. The proposed bylaws also de-

scribed in some detail the subjects which would be considered by the Conference.

About this time the national election of 1960 occurred, and further action looking toward a call of the Conference was postponed.

TEMPORARY CONFERENCE UNDER PRESIDENT KENNEDY

President-elect Kennedy promptly after the election named James M. Landis, former dean of the Harvard Law School, to prepare for him a report on the administrative agencies and their problems. Dean Landis submitted his report on December 26, 1960. In it he referred to the President's request of August 29, 1960, to the Organization Committee and to the preliminary draft of bylaws. He recommended that this work be encouraged and continued. He said, in part:

"* * * Much can come from this effort, including not merely revisions in our administrative procedures but also the making of our regulatory agencies into a system just as the Judicial Conference of the United States has made a system of what were once isolated and individual Federal courts * * *.

* * * * *

"The concept of an Administrative Conference of the United States promises more to the improvement of administrative procedures and practices and to the systematization of the Federal regulatory agencies than anything presently on the horizon. It could achieve all that the concept of the Office of Administrative Procedure envisaged by the Hoover Commission and endorsed by the American Bar Association hoped to accomplish, and can do so at a lesser cost and without the danger of treading on the toes of any of the agencies."

President Kennedy sent to the Congress a special message on regulatory agencies on April 13, 1961.³ In the course of that message he discussed the establishment of an Administrative Conference of the United States. He said: "The process of modernizing and reforming administrative procedures is not an easy one. It requires both research and understanding. Moreover, it must be a continuing process, critical of its own achievements and striving always for improvement." He announced that he had issued an Executive order⁴ calling at the earliest practicable date the Conference, to be organized by a council of lawyers and other experts from the agencies, the bar, and university faculties. He said that the Council would consider questions concerning the effective dispatch of agency business, "along with the desirability of making this conference, if it provides itself, a continuing body for the resolution of these varied and changing procedural problems." He further said:

"The results of such an Administrative Conference will not be immediate but properly pursued they can be enduring. As the Judicial Conference did for the courts, it can bring a sense of unity of our administrative agencies and a desirable degree of uniformity in their procedures. The interchange of ideas and techniques that can ensue from working together on problems that upon analysis may prove to be common ones, the exchanges of experience, and the recognition of advances achieved as well as solutions found imprac-

³ H. Doc. 135, 87th Cong.

⁴ Executive Order 10934, 26 Fed. Reg. 3233 (Apr. 15, 1961), reproduced in the appendix.

tical, can give new life and new efficiency to the work of our administrative agencies."

In his Executive order, President Kennedy established the Administrative Conference of the United States, to consist of a Council of 11 members named by him and a general membership from the executive departments, the administrative agencies, the practicing bar, and other persons specially informed. "The purpose of the conference," says the Executive order, "shall be to assist the President, the Congress, and the administrative agencies and executive departments in improving existing administrative procedures." The order provided that the composition of the membership should be determined by the Council; that the total membership be not less than 50 persons, a majority of whom should be from the executive departments and administrative agencies; that the Government members be designated by the heads of their respective departments and agencies; and that the other general members be named by the Chairman, with the approval of the Council. The order provided that the Director of the Office of Administrative Procedure, which is in the Department of Justice, should act as the Executive Secretary of the Conference. It authorized the making of arrangements with the President of the Senate and the Speaker of the House for participation by interested committees of the Congress.

The Subcommittee on Administrative Practice and Procedure of the Senate Committee on the Judiciary submitted a report (S. Rept. 168, 87th Cong., 1st sess.) on April 14, 1961, in the course of which it said:

"The subcommittee recommends that every assistance should be given in making permanent an Administrative Procedure Conference, and that Congress should provide the Office of Administration and Reorganization with funds to provide a permanent secretariat of that Conference.

* * * * *

"That such an assembly of the persons most directly concerned with the functioning of administrative agencies offers a continuing possibility of improvement in procedures through interchange of ideas is a matter of universal agreement * * *. The subcommittee recommends that every congressional encouragement be given to the establishment and continuation of the conference. Since, as we have pointed out elsewhere, we believe that the guidance of the President is necessary for the improvement of the administrative process, we recommend that the permanent staff should be a part of the Office of Administration and Reorganization, and therefore a part of the President's own staff."

On April 29, 1961, the President announced the appointment of the Council of the Administrative Conference, and the Council was immediately called into session. On May 23, 1961, the Council finalized plans for the institution and operation of the Conference. It named the agencies to be invited, approved a list of non-Government members to be named, adopted bylaws to be proposed to the Conference, adopted in general terms a program of work for the Conference, and adopted a budget to be submitted to the Congress. It called the first meeting of the Conference for Tuesday, June 27, 1961, in Washington.

The Conference met in six plenary sessions. The first was held on June 27, 1961. The five later sessions convened on December 5 and 6, 1961, April 3, 1962, June 29, 1962, October 16, 17, and 18, 1962, and December 4 and 5, 1962.

The nine standing committees met for the first time immediately following the first plenary session. During the 18 months which followed there were a total of 93 such committee meetings.

The Conference rendered a final report of its activities under date of December 15, 1962.⁵ At the same time, under date of December 17, 1962, the Conference, pursuant to section 2 of Executive Order 10934, reported its suggestions of appropriate means to be employed in the future for the purpose of improving the processes of administrative agencies. It said, in part:

"We recommend the establishment of means by which agencies in the Federal Government may cooperatively, continuously, and critically examine their administrative processes and related organizational problems. Believing that the main sources of information as well as the resolve to couple fairness with efficiency lie within the agencies themselves, we urge that the proposed organization be composed largely of governmental personnel, but with a sufficient infusion of outside experts to assure objectivity and variety of views."

It is recommended the creation, on a permanent footing, of an Administrative Conference of the United States. Thereafter, the Bureau of the Budget translated the recommendation of the Conference for a continuing Conference into the form of a proposed bill. The draft was introduced in the Senate by Senator Long of Missouri as S. 1664 (88th Cong., 1st sess.) and is the subject of this report.

APPENDIX II

[Executive Order 10934]

ESTABLISHING THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Whereas the performance of regulatory functions and related responsibilities for the determination of private rights, privileges, and obligations by executive departments and administrative agencies of the United States Government substantially affects large numbers of private individuals and many areas of economic and business activity; and

Whereas it is essential to the protection of private and public interests and to the sustained development of the national economy that Federal administrative procedures ensure maximum efficiency and fairness in the performance of these governmental functions; and

Whereas the steady expansion of the Federal administrative process during the past several years has been attended by increasing concern over the efficiency and adequacy of department and agency procedures; and

Whereas the experience of the several groups which have examined Federal administrative procedures in recent years demonstrates that substantial progress in improving department and agency procedures can result from cooperative effort by the departments and agencies

⁵ Reprinted in Senate Committee on the Judiciary, Subcommittee on Administrative Practice and Procedure, "Selected Reports of the Administrative Conference of the United States," S. Doc. —, 88th Cong., 1st sess. (1963).

working together with members of the practicing bar and other interested persons:

Now, therefore, by virtue of the authority vested in me as President of the United States, it is ordered as follows:

SECTION 1. *Establishment of the Conference.* There is hereby established a conference to be known as the Administrative Conference of the United States, which shall consist of a Council of eleven members named by the President, one of whom he shall designate to be Chairman of the Conference, and a general membership from Federal executive departments and administrative agencies, the practicing bar, and other persons specially informed by knowledge and experience with respect to Federal administrative procedures.

SEC. 2. *Purpose.* The purpose of the Conference shall be to assist the President, the Congress and the administrative agencies and executive departments in improving existing administrative procedures. To this end the Conference shall conduct studies of the efficiency, adequacy and fairness of procedures by which Federal executive departments and administrative agencies protect the public interest and determine the rights, privileges and obligations of private persons. The Conference shall from time to time report to the President any conclusions reached by its members based on such studies, together with suggestions for appropriate measures to improve the administrative process. The Conference shall make a Final Report to the President no later than December 31, 1962, summarizing its activities, evaluating the need for further studies of administrative procedures, and suggesting appropriate means to be employed for this purpose in the future.

SEC. 3. *Membership.* The composition of the general membership of the Conference shall be determined by the Council; provided that the total membership shall be not less than fifty persons, and at least a majority of the total membership shall be from Federal executive departments and administrative agencies, so distributed as to effect an appropriate representation among the several departments and agencies. General members from Government service shall be designated by the heads of their respective departments and agencies. Other general members shall be named by the Chairman with the approval of the Council from the practicing bar, scholars in the fields of administrative law and government, and other persons specially informed by knowledge and experience with respect to Federal administrative procedures. Members of the Conference who are not in Government service shall participate in the activities of the Conference solely as private individuals without official responsibility on behalf of the Government of the United States.

SEC. 4. *Staff.* The Attorney General of the United State is hereby authorized and directed to furnish to the Conference research and staff assistance from the Office of Administrative Procedure in the Department of Justice, through the Director of that Office and the Chairman of the Conference, and the Director of the Office of Administrative Procedure shall act as Executive Secretary of the Conference.

SEC. 5. *Operation of the Conference.* The Conference shall have authority to adopt bylaws and regulations not inconsistent with the provisions of this order for the conduct of its functions. Every member of the Conference will be expected to participate in all respects according to his own views, and not necessarily as a representative of

any department or agency or other group from which he may have been chosen.

SEC. 6. *Committees.* Committees of the Conference shall be appointed by the Chairman, with the approval of the Council. Committees shall have authority to designate subcommittees from their own membership for the purposes of conducting studies and making reports to the full committees.

SEC. 7. *Functions of the Council.* The Council is hereby authorized to perform the following functions:

(a) To meet under the chairmanship and upon the call of the Chairman of the Conference.

(b) To determine the composition of the general membership of the Conference as provided in section 3 above.

(c) To make appropriate arrangements with the President of the Senate and the Speaker of the House of Representatives for participation in the activities of the Conference by interested committees of the Congress. Representatives of the Congress shall have the privilege of the floor of the Conference.

(d) To determine the time and place of plenary sessions of the Conference.

(e) To propose bylaws and regulations, including rules of procedure and Committee organization, for adoption by the Conference.

(f) To propose to the Conference the matters concerning which the Conference and its committees shall conduct investigations and studies.

(g) To receive and consider reports of committees of the Conference and proposals adopted by the Conference, and to transmit them to the President together with the views of the Council concerning such matters.

SEC. 8. *Cooperation of Federal agencies.* All executive departments and administrative agencies of the Federal Government are authorized and directed to cooperate with the Conference and to furnish such information and assistance not inconsistent with law as may reasonably be required in the performance of its functions.

SEC. 9. *Expenditures of the Conference.* Each executive department and administrative agency which is represented by one or more members of the Conference named or designated as provided in section 3 of this order shall, as may be necessary for the purpose of effectuating the provisions of this order, furnish assistance to the Conference in accordance with section 214 of the act of May 3, 1945, 59 Stat. 134 (31 U.S.C. § 691). Such assistance may include detailing employees to the Conference to perform such functions consistent with the purposes of this order as the Conference may assign to them.

JOHN F. KENNEDY.

THE WHITE HOUSE, April 13, 1961.

[26 Fed. Reg. 3233 (April 15, 1961)]



S. 1664

[Report No. 1565]

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 31, 1963

Referred to the Committee on the Judiciary

JULY 23, 1964

Reported with amendments, committed to the Committee of the Whole House
on the State of the Union, and ordered to be printed

[Omit the part struck through and insert the part printed in italic]

AN ACT

To provide for continuous improvement of the administrative
procedure of Federal agencies by creating an Administrative
Conference of the United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Administrative Confer-
4 ence Act".

5 FINDINGS AND DECLARATION OF POLICY

6 SEC. 2. The Congress finds and declares that—

7 (a) administration of regulatory and other statutes
8 enacted by Congress in the public interest substantially
9 affects large numbers of private individuals and many
10 areas of business and economic activity;

1 (b) the protection of public and private interests
2 requires continuing attention to the administrative proce-
3 dure of Federal agencies to insure maximum efficiency
4 and fairness in achieving statutory objectives;

5 (c) responsibility for assuring fair and efficient ad-
6 ministrative procedure is inherent in the general re-
7 sponsibilities of officials appointed to administer Federal
8 statutes;

9 (d) experience has demonstrated that coopera-
10 tive effort among Federal officials, assisted by private
11 citizens and others whose interest, competence, and
12 objectivity enable them to make a unique contribution,
13 can find solutions to complex problems and achieve
14 substantial progress in improving the effectiveness of
15 administrative procedure; and

16 (e) it is the purpose of this Act to provide suit-
17 able arrangements through which Federal agencies,
18 assisted by outside experts, may cooperatively study
19 mutual problems, exchange information, and develop
20 recommendations for action by proper authorities to
21 the end that private rights may be fully protected and
22 regulatory activities and other Federal responsibilities
23 may be carried out expeditiously in the public interest.

DEFINITIONS

SEC. 3. As used in this Act—

(a) “Administrative program” includes any Federal function which involves protection of the public interest and the determination of rights, privileges, and obligations of private persons through rulemaking, adjudication, licensing, or investigation, as those terms are used in the Administrative Procedure Act (5 U.S.C. 1001–1011), *except that it does not include any military, naval, or foreign affairs function of the United States.*

(b) “Administrative agency” means any authority as defined by section 2 (a) of the Administrative Procedure Act (5 U.S.C. 1001 (a)).

(c) “Administrative procedure” means procedure used in carrying out an administrative program and shall be broadly construed to include any aspect of agency organization, procedure, or management which may affect the equitable consideration of public and private interests, the fairness of agency decisions, the speed of agency action, and the relationship of operating methods to later judicial review, but shall not be construed to include the scope of agency responsibility as established by law or matters of substantive policy committed by law to agency discretion.

1 ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

2 SEC. 4. (a) There is hereby established the Admin-
3 istrative Conference of the United States (hereinafter re-
4 ferred to as the "Conference"), *which shall consist of not*
5 *more than ninety-one nor fewer than seventy-five members*
6 *appointed as set forth in subsection (b) of this section.*

7 (b) The Conference shall be composed of—

8 (1) a full-time Chairman, who shall be appointed
9 for a five-year term by the President, by and with the
10 advice and consent of the Senate. The Chairman shall
11 receive compensation at the highest rate established by
12 law for the chairman of an independent regulatory
13 board or commission, and may continue to serve until
14 his successor has been appointed and has qualified;

15 (2) the chairman of each independent regulatory
16 board or commission or a person designated by such
17 board or commission;

18 (3) the head of each executive department or other
19 administrative agency which is designated by the Presi-
20 dent, or a person designated by such head of a depart-
21 ment or agency;

22 (4) when authorized by the Council, one or more
23 appointees from any such board, commission, depart-
24 ment, or agency, designated by the department or
25 agency head or, in the case of a board or commission,

by the head of such board or commission with the approval of the board or commission;

(5) persons appointed by the President to membership upon the Council hereinafter established who are not otherwise members of the Conference; and

~~(6) other members in such number as will assure full representation of the viewpoints of private citizens and the utilization of diverse experience, who shall be appointed by the Chairman, with the approval of the Council, for terms of two years. Members appointed by the Chairman shall be members of the practicing bar, scholars in the field of administrative law or government, or others specially informed by knowledge and experience with respect to Federal administrative procedure.~~

(6) no more than thirty-six other members appointed by the Chairman, with the approval of the Council, for terms of two years: Provided, That the number of members appointed by the Chairman shall at no time be less than one-third nor more than two-fifths of the total number of members. Such members shall be selected in a manner which will provide broad representation of the views of private citizens and utilize diverse experience, and shall be members of the practicing bar, scholars in

1 *the field of administrative law or government, or others*
 2 *especially informed by knowledge and experience with*
 3 *respect to Federal administrative procedure.*

4 (c) Members of the Conference other than the Chair-
 5 man shall receive no compensation for service, but members
 6 appointed from outside the Federal Government shall be
 7 allowed travel expenses, including per diem in lieu of sub-
 8 sistence, as authorized by law (5 U.S.C. 73b-2) for persons
 9 serving without compensation.

10 DUTIES AND POWERS OF THE CONFERENCE

11 SEC. 5. To carry out the purposes of this Act the Con-
 12 ference is authorized to—

13 (a) study the efficiency, adequacy, and fairness of
 14 the administrative procedure used by administrative
 15 agencies in carrying out administrative programs, *and*
 16 *make recommendations to administrative agencies, collec-*
 17 *tively or individually, and to the President, the Congress,*
 18 *or the Judicial Conference of the United States, in*
 19 *connection therewith, as it deems appropriate;*

20 ~~(b) make recommendations to administrative~~
 21 ~~agencies, collectively or individually, and to the Presi-~~
 22 ~~dent, the Congress, or the Judicial Conference of the~~
 23 ~~United States, as it deems appropriate;~~

24 ~~(c)~~ (b) arrange for interchange among administra-

1 tive agencies of information potentially useful in improv-
2 ing administrative procedure; and

3 ~~(d)~~ (c) collect information and statistics from ad-
4 ministrative agencies and publish such reports as it deems
5 useful for evaluating and improving administrative
6 procedure.

7 ORGANIZATION OF THE CONFERENCE

8 SEC. 6. (a) The membership of the Conference meeting
9 in plenary session shall constitute the Assembly of the Con-
10 ference. The Assembly shall have ultimate authority over
11 all activities of the Conference. Specifically, it shall have
12 power to (1) adopt such recommendations as it deems ap-
13 propriate for improving administrative procedure: *Provided*,
14 That any member or members who disagree with a recom-
15 mendation adopted by the Assembly shall be accorded the
16 privilege of entering dissenting opinions and alternative pro-
17 posals in the record of Conference proceedings, and the
18 opinions and proposals so entered shall accompany the Con-
19 ference recommendations in any publication or distribution
20 thereof; and (2) adopt bylaws and regulations not incon-
21 sistent with this Act for carrying out the functions of the Con-
22 ference, including the creation of such committees as it deems
23 necessary for the conduct of studies and the development of
24 recommendations for consideration by the Assembly.

(b) The Conference shall include a Council composed of the Chairman of the Conference, who shall be the Chairman of the Council, and ten other members appointed by the President, *of whom not more than one-half shall be officials or personnel of Federal regulatory agencies or executive departments. Members other than the Chairman shall be appointed for three-year terms, except that the Council members initially appointed shall serve for one, two, or three years, as designated by the President, and each member:* *Provided, That (1) the service of any member shall terminate whenever a change in his employment status would make him ineligible for Council membership under the conditions of his original appointment, and (2) except as provided in item (1), above, any member whose term has expired may continue to serve until a successor is appointed. The Council shall have power to (1) determine the time and place of plenary sessions of the Conference and the agenda for such meetings and it shall call at least one plenary session each year; (2) propose bylaws and regulations, including rules of procedure and committee organization, for adoption by the Assembly; (3) make recommendations to the Conference or its committees upon any subject germane to the purposes of the Conference; (4) receive and consider reports and recommendations of committees of the Conference and transmit them to members of the Conference with the views*

1 and recommendations of the Council; (5) designate a
2 member of the Council to preside at meetings of the Council
3 in the absence or incapacity of the Chairman and Vice
4 Chairman; (6) designate such additional officers of the
5 Conference as it may deem desirable; (7) approve or revise
6 the Chairman's budgetary proposals; and (8) exercise such
7 other powers as may be delegated to it by the Assembly.

8 (c) The Chairman shall be the chief executive of the
9 Conference. In that capacity he shall have power to (1)
10 make inquiries into matters he deems important for Con-
11 ference consideration, including matters proposed by persons
12 inside or outside the Federal Government; (2) be the official
13 spokesman for the Conference in relations with the several
14 branches and agencies of the Federal Government and with
15 interested organizations and individuals outside the Govern-
16 ment, including responsibility for encouraging Federal
17 agencies to effectuate the recommendations of the Con-
18 ference; (3) request agency heads to provide information
19 needed by the Conference, which information shall be
20 supplied to the extent permitted by law; (4) recommend
21 to the Council appropriate subjects for action by the Con-
22 ference; (5) appoint, with the approval of the Council,
23 members of committees authorized by the bylaws and
24 regulations of the Conference; (6) prepare, for approval
25 of the Council, estimates of the budgetary requirements

1 of the Conference; (7) appoint employees, subject to
2 the civil service and classification laws, define their duties
3 and responsibilities, and direct and supervise their activities;
4 (8) rent office space in the District of Columbia; (9)
5 provide necessary services for the Assembly, the Council,
6 and the committees of the Conference; (10) organize and
7 direct studies ordered by the Assembly or the Council, utiliz-
8 ing from time to time, as appropriate, experts and consultants
9 who may be employed as authorized by section 15 of the
10 Administrative Expenses Act of 1946, as amended (5
11 U.S.C. 55a), but at rates for individuals not to exceed \$100
12 per diem; (11) upon request of the head of any agency,
13 furnish assistance and advice on matters of administrative
14 procedure; and (12) exercise such additional authority as
15 may be delegated to him by the Council or the Assembly.
16 The Chairman shall preside at meetings of the Council and
17 at each plenary session of the Conference, to which he shall
18 make a full report concerning the affairs of the Conference
19 since the last preceding plenary session. The Chairman
20 shall, on behalf of the Conference, transmit to the President
21 and the Congress an annual report and such interim reports
22 as he deems desirable; ~~such reports shall set forth the com-~~
23 ~~pliance of the agencies with the recommendations of the~~
24 ~~Conference.~~

25 (d) The President may designate a member of the

1 Council as Vice Chairman, who shall serve as Chairman
2 in the event of a vacancy in that office or in the absence or
3 incapacity of the Chairman.

4 ~~(e) Each member of the Conference shall participate~~
5 ~~in his individual capacity and not as a representative of any~~
6 ~~governmental or nongovernmental organization. Members~~
7 ~~of the Conference who are not regular Federal officials or~~
8 ~~personnel shall be special Government employees for the pur-~~
9 ~~poses of sections 203, 205, 207, 208, and 209 of title 18,~~
10 ~~United States Code.~~

11 APPROPRIATIONS

12 SEC. 7. There are hereby authorized to be appropriated
13 such sums as may be necessary, *not to exceed \$250,000*, to
14 accomplish the purposes of this Act.

Passed the Senate October 30 (legislative day, October
22), 1963.

Attest:

FELTON M. JOHNSTON,

Secretary.

[Report No. 1565]

AN ACT

To provide for continuous improvement of the administrative procedure of Federal agencies by creating an Administrative Conference of the United States, and for other purposes.

OCTOBER 31, 1963

Referred to the Committee on the Judiciary

JULY 23, 1964

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

Digest of CONGRESSIONAL PROCEEDINGS

OFFICE OF
BUDGET AND FINANCE

(For information only;
should not be quoted
or cited)

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

UNITED STATES DEPARTMENT OF AGRICULTURE

Washington, D. C. 20250

Official business Postage and fees paid
U. S. Department of Agriculture

Issued August 7, 1964

For actions of August 6, 1964

88th-2nd; No. 152

CONTENTS

Administrative law.....3	Expenditures.....8	Poverty.....1,14
Alaska.....4	Farm labor.....15	Public Law 480.....18
Appalachia.....16	Flood prevention.....6	Reclamation.....7
Appropriations.....5	Foreign trade.....9	Recreation.....11
Area redevelopment.....2	Livestock prices.....16	Shipping rates.....17
Education.....19	Nomination.....12	Watersheds.....6
Electrification.....10	Personnel.....8	Wheat.....13

HIGHLIGHTS: House continued debate on poverty bill. House Rules Committee cleared Area Redevelopment Act amendments. Sen. Metcalf criticized "propaganda" of private electric-power companies. Senate committee reported Central Arizona reclamation project bill. Rep. Hutchinson criticized wheat certificate program. Reps. Derwinski and Lipscomb inserted articles critical of poverty bill. Rep. Nelsen inserted article critical of Secretary Freeman's encouragement of more livestock production in Appalachia. Rep. Poage introduced Public Law 480 bill.

HOUSE

1. **POVERTY.** Continued debate on H. R. 11377, the poverty bill. General debate was concluded and the House began reading the text for amendment. pp. 17672-739, 17745-6, 17749
2. **AREA REDEVELOPMENT.** The Rules Committee cleared a resolution for consideration of S. 1163, to amend certain provisions of the Area Redevelopment Act. p. D651
3. **ADMINISTRATIVE LAW.** The Rules Committee cleared a resolution for consideration of S. 1664, to provide for continuous improvement of the administrative procedure of Federal agencies by creating an Administrative Conference of the United States. pp. D651
4. **ALASKA.** Received the conference report on S. 2881, the Alaska relief bill (H. Rept. - 1710). pp. 17747-8

5. LEGISLATIVE APPROPRIATION BILL, 1965. Received the conference report on this bill, H. R. 10723 (H. Rept. 1711). pp. 17749-50
6. WATERSHEDS; FLOOD PREVENTION. The Agriculture Committee, in a letter to the Speaker, approved the works plans for the following watershed projects: Mill Creek, Ga.; Turtle River, Ga.; Marshyhope Creek, Del. and Md.; Wellington-Napoleon, Mo.; and 102 river tributaries, Mo. p. 17670

SENATE

7. RECLAMATION. The Interior and Insular Affairs Committee reported with amendment S. 1658, to authorize the Central Arizona reclamation project (S. Rept. 1330). p. 17853
Sen. Allott inserted a statement by Gov. Johnson, Colo., which "sets out the situation in which the Upper Basin States find themselves" in view of the Central Arizona project bill. pp. 17811-2
8. EXPENDITURES; PERSONNEL. Sen. Byrd inserted the June report, "Personnel and Pay Summary," by the Joint Committee on Reduction of Nonessential Federal Expenditures. pp. 17756-60
9. FOREIGN TRADE. Sen. Dirksen was added as a co-sponsor of S. Con. Res. 91, expressing it as the sense of Congress that the U. S. "should, on agricultural commodities as well as other commodities, bargain and negotiate in good faith as it is pledged to do under the Reciprocal Trade Act." p. 17763
10. ELECTRIFICATION. Sen. Metcalf criticized "propaganda" by the private electric power companies regarding their rates, etc. pp. 17777-9
11. RECREATION. Passed as reported S. 1365, to establish the Fire Island National Seashore, N. Y. pp. 17783-4
12. NOMINATION of Otto Eckstein to the Council of Economic Advisers was received. p. 17853

ITEMS IN APPENDIX

13. WHEAT. Extension of remarks of Rep. Hutchison claiming that "the disastrous effects of the administration's wheat certificate program are now painfully apparent in the marketplace" and inserting an editorial claiming an income loss to Michigan farmers as a result of the certificate program. p. A4150
14. POVERTY. Rep. Derwinski inserted an article, "Antipoverty Legislation, a Blueprint for Confusion," calling for more clearly defined lines of responsibility in the poverty bill. pp. A4155-6
Rep. Lipscomb inserted an editorial urging "a more effective attack on poverty" redrafted "in a calmer, post-election atmosphere." pp. A4156-7
15. FARM LABOR. Rep. Talcott inserted an editorial indicating possible harm to the trucking industry from elimination of the bracero program, and calling for more mechanization to replace the braceros. pp. A4162-3
16. APPALACHIA; LIVESTOCK PRICES. Rep. Nelsen inserted an editorial claiming the Secretary was inconsistent in first blaming domestic overproduction for the

WATER POLLUTION

Committee on Public Works: Met in executive session on S. 649, and related bills, to amend the Federal Water Pollution Control Act. Adjourned subject to call of the Chair.

LAOS

Committee on Rules: Granted an open rule, with 1 hour of debate, on S. 1627, regarding an International Commission for Supervision and Control in Laos.

Testimony was given on the request for a rule by Representatives Zablocki and Thomson of Wisconsin.

AREA REDEVELOPMENT

Committee on Rules: Granted an open rule, with 3 hours of debate, on S. 1163, the Area Redevelopment Act.

ADMINISTRATIVE CONFERENCE

Committee on Rules: Granted an open rule, with 1 hour of debate, on S. 1664, to establish an Administrative Conference of the United States.

Testimony was given on a request for a rule by Representatives Willis and Mathias.

COMMITTEE BUSINESS

Committee on Ways and Means: Met in executive session. No announcements were made.

Joint Committee Meetings

APPROPRIATIONS—LEGISLATIVE

Conferees, in executive session, agreed to file a conference report on the differences between the Senate- and House-passed versions of H.R. 10723, fiscal 1965 appropriations for the legislative branch.

BILLS SIGNED BY THE PRESIDENT

New Laws

(For last listing of public laws, see DIGEST, p. D646, August 5, 1964)

H.R. 9021, authorizing conveyance of certain land to the Board of Education of Salt Lake City. Signed August 4, 1964 (P.L. 88-400).

H.R. 248, to provide assistance in acquiring especially adapted housing for blind veterans who have lost the use of a leg. Signed August 4, 1964 (P.L. 88-401).

H.R. 6652, authorizing the Administrator of Veterans' Affairs to sell direct loans made to veterans and to guarantee such loans. Signed August 4, 1964 (P.L. 88-402).

S.J. Res. 184, extending felicitations to former President Herbert Hoover on the occasion of his 90th birthday. Signed August 6, 1964 (P.L. 88-403).

COMMITTEE MEETINGS FOR FRIDAY, AUGUST 7

(All meetings are open unless otherwise designated)

Senate

Committee on Appropriations, executive, on H.R. 11202, agriculture appropriations, to be followed by consideration of H.R. 11369, military construction appropriations, 10 a.m., 1223 New Senate Office Building.

Committee on Armed Services, NATO Status of Forces Subcommittee, open followed by executive, to receive report on operation of Article VII of the NATO Status of Forces Treaty, 10:30 a.m., 212 Old Senate Office Building.

Committee on Banking and Currency, Subcommittee on Financial Institutions, on S. 2883, re establishment of branch offices by the Michigan National Bank, Lansing, 10 a.m., 5302 New Senate Office Building.

Committee on the District of Columbia, executive, on nominations and pending bills, 10 a.m., 6228 New Senate Office Building.

Committee on Finance, to continue its hearings on H.R. 11865, social security bill, and amendments thereto, to hear HEW Secretary Celebrezze, 10 a.m., 2221 New Senate Office Building.

Committee on Interior and Insular Affairs, Minerals, Materials, and Fuels Subcommittee, executive, on S. 2500, phosphate leases; S. 883, geothermal steam leases; S. 1984, mineral lease renewal dates; S. 2327, coal leases; and S. 1013, strip-mining study, 10 a.m., 3112 New Senate Office Building.

Committee on Public Works, executive, on S. 2782, proposed Appalachian Regional Development Act, 10 a.m., 4200 New Senate Office Building.

House

Committee on Agriculture, executive, to consider a bill on Public Law 480 (83d Cong.), to increase the consumption of U.S. commodities in foreign countries, 10 a.m., 1310 Longworth House Office Building.

Committee on Government Operations, Subcommittee on Foreign Operations, executive, on pending business, 10 a.m., 1501-B Longworth House Office Building.

Committee on Interior and Insular Affairs, Subcommittee on Indian Affairs, on various Indian Affairs measures, 9:45 a.m., 1324 Longworth House Office Building.

Committee on Interstate and Foreign Commerce, Subcommittee on Transportation and Aeronautics, to continue a hearing on H.R. 8984, and related bills, regarding the Railroad Adjustment Board, 10 a.m., 1334 Longworth House Office Building.

Committee on the Judiciary, Subcommittee No. 1, to hold a hearing on public immigration legislation, 9:30 a.m., 346 Cannon House Office Building.

Committee on Merchant Marine and Fisheries, Subcommittee on Merchant Marine, to continue a hearing on a review of the Federal Maritime Commission and its administration of the Shipping Act of 1916, 10 a.m., 219 Cannon House Office Building.

Committee on Rules, to consider granting a rule on the following bills:

H.R. 11893, regarding temporary retention of "1964" on all coins;

H.R. 12175, regarding Housing Act of 1964;

S. 1451, regarding claims of shareholders of General Dyestuff Corp.;

S. 1626, regarding annuities of widows of Supreme Court Justices; and

H.R. 8068, to authorize free transportation of guides accompanying blind persons aboard aircraft, 10:30 a.m., H-313 U.S. Capitol Building.



Congressional Record

The public proceedings of each House of Congress, as reported by the Official Reporters thereof, are printed pursuant to directions of the Joint Committee on Printing as authorized by appropriate provisions of Title 44, United States Code, and published for each day that one or both Houses are in session, excepting very infrequent instances when two or more unusually small consecutive issues are printed at one time.

The Congressional Record will be furnished by mail to subscribers, free of postage, for \$1.50 per month, payable in advance. Remit check or money order, made payable to the Superintendent of Documents, directly to the Government Printing Office, Washington, D.C., 20402. For subscription purposes, 20 daily issues constitute a month. The charge for individual copies varies in proportion to the size of the issue.

Following each session of Congress, the daily Congressional Record is revised, printed, permanently bound and is sold by the Superintendent of Documents in individual parts or by sets.

With the exception of copyrighted articles, there are no restrictions on the republication of material from the Congressional Record.

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

UNITED STATES DEPARTMENT OF AGRICULTURE

Washington, D.C. 20250

Official business Postage and fees paid

U. S. Department of Agriculture

OFFICE OF
BUDGET AND FINANCE

(For information only;
should not be quoted
or cited)

Issued
For actions of

Aug. 10, 1964
Aug. 7 & 8, 1964
88th-2nd; Nos. 153
and 154

Administrative conference.....27	Electrification.....27	Public Law 480.....36
Administrative law.....15	Farm program.....5	Public works.....2
Agricultural appropriations.....1,17	Feed relief.....16	Reclamation.....2,14,25
Alaska relief.....12,21	Foreign agriculture.....32	Rice exports.....10
Appropriations... 1,2,23	Foreign aid.....3,18	Riverways.....27
Area redevelopment...13,28	Housing.....27	Strip mining.....20
Beef exports.....19	Labeling.....27	Tariff.....26
Commissions.....34,35	Legislative program.....27	Trade.....33
Conservation.....6	Marketing.....8	Transportation.....7
Containers.....27,37	Meat imports.....27,31	Wheat program.....30
Crop insurance.....4	Military construction...23	Wilderness.....11
	Personnel.....22	
	Poverty.....9,24,29,34	

HIGHLIGHTS: Senate passed agricultural appropriation bill. House passed poverty bill. Senate passed public works appropriation bill. Senate debated foreign-aid authorization bill. Sen. Miller inserted editorial criticizing administration's farm program. Rep. Poage introduced Public Law 480 bill.

SENATE - August 7

1. AGRICULTURAL APPROPRIATION BILL, 1965. The Appropriations Committee reported with amendments this bill, H. R. 11202 (S. Rept. 1331). Attached to this Digest is the committee report, which includes a statement of committee actions. p. 17886
2. PUBLIC WORKS APPROPRIATION BILL, 1965. Passed with amendments this bill, H. R. 11579 (pp. 17895-936). Senate conferees were appointed (p. 17936). Rejected, 23-57, an amendment by Sen. Nelson to reduce reclamation work by \$1,500,000 (p. 17922).

3. FOREIGN AID. Continued debate on H. R. 11380, the foreign-aid authorization bill. pp. 17937-47
4. CROP INSURANCE. Both Houses received from this Department a proposed bill to amend the Federal Crop Insurance Act, including a provision to remove the ceiling on appropriations; to Senate Agriculture and Forestry Committee and House Agriculture Committee. pp. 17885, 18037
5. FARM PROGRAM. Sen. Miller inserted and commended an editorial by Dick Hanson criticizing the administration's farm program. p. 17949
6. CONSERVATION. Sen. Mansfield inserted an article stating that this Congress may be known as "The Conservation Congress." p. 17856
7. TRANSPORTATION. Sen. Cotton inserted and commended an article by Ben Kelley indicating a belief that the "freight-car shortage" is a myth. pp. 17888-9
8. MARKETING. Sen. McGee inserted a letter from the River Markets Group, Nebr., commending the work of Sen. McGovern in connection with the bill to establish the National Commission on Food Marketing. p. 17950

HOUSE - August 7

9. POVERTY. Concluded debate on H. R. 11377, the poverty bill. By a 228-190 vote, agreed to an amendment by Rep. Landrum to substitute the text of S. 2642, a similar bill, with several modifications. During consideration in Committee of the Whole, adopted a motion to strike out the enacting clause, by a 170-135 vote. Then reversed this action by a record vote of 197-225. pp. 17972-18025
10. RICE EXPORTS. Rep. Thompson, Tex., spoke against plans for the Common Market to impose a tariff on U. S. long-grain rice. p. 17953
11. WILDERNESS. House conferees were appointed on S. 4, to establish a National Wilderness Preservation System. Senate conferees have been appointed. p. 18025
12. ALASKA RELIEF. Agreed to the conference report on S. 2881, to provide assistance to Alaska for reconstruction of areas damaged by the recent earthquake. p. 18026
13. AREA REDEVELOPMENT. Rep. Talcott criticized administration of the ARA program and referred to a recent GAO report on this matter. p. 18029
The Rules Committee reported a resolution for consideration of S. 1163, to amend certain provisions of the Area Redevelopment Act. p. 18037
14. RECLAMATION. The Interior and Insular Affairs Committee reported with amendment H. R. 2337, to authorize construction of the Lower Teton division of the Teton Basin reclamation project, Idaho (H. Rept. 1715). p. 18037
15. ADMINISTRATIVE LAW. The Rules Committee reported a resolution for consideration of S. 1664, to provide for continuous improvement of the administrative procedure of Federal agencies by creating an Administrative Conference of the U. S. p. 18037
16. FEED RELIEF. The Agriculture Committee reported without amendment H. R. 1211, to fix penalties for misuse of feed made available for relieving distress for preservation of foundation herds (H. Rept. 1720). p. 18037

CONSIDERATION OF S. 1664

AUGUST 7, 1964.—Referred to the House Calendar and ordered to be printed

Mr. ELLIOTT, from the Committee on Rules, submitted the following

R E P O R T

[To accompany H. Res. 824]

The Committee on Rules, having had under consideration House Resolution 824, report the same to the House with the recommendation that the resolution do pass.



House Calendar No. 279

88TH CONGRESS
2D SESSION

H. RES. 824

[Report No. 1719]

IN THE HOUSE OF REPRESENTATIVES

AUGUST 7, 1964

Mr. ELLIOTT, from the Committee on Rules, reported the following resolution;
which was referred to the House Calendar and ordered to be printed

RESOLUTION

1 *Resolved*, That upon the adoption of this resolution it
2 shall be in order to move that the House resolve itself into
3 the Committee of the Whole House on the State of the
4 Union for the consideration of the bill (S. 1664) to provide
5 for continuous improvement of the administrative procedure
6 of Federal agencies by creating an Administrative Conference
7 of the United States, and for other purposes. After general
8 debate, which shall be confined to the bill and shall continue
9 not to exceed one hour, to be equally divided and controlled
10 by the chairman and ranking minority member of the Com-
11 mittee on the Judiciary, the bill shall be read for amend-
12 ment under the five-minute rule. At the conclusion of the

1 consideration of the bill for amendment, the Committee shall
2 rise and report the bill to the House with such amendments
3 as may have been adopted, and the previous question shall
4 be considered as ordered on the bill and amendments thereto
5 to final passage without intervening motion except one
6 motion to recommit.

House Calendar No. 279

88TH CONGRESS
2D SESSION

H. RES. 824

[Report No. 1719]

RESOLUTION

Providing for consideration of S. 1664, a bill to provide for continuous improvement of the administrative procedure of Federal agencies by creating an Administrative Conference of the United States, and for other purposes.

By Mr. ELLIOTT

AUGUST 7, 1964

Referred to the House Calendar and ordered to be
printed

Aug 12, 1964

Passed with amendments S. 502, to preserve the jurisdiction of the Congress over construction of hydroelectric projects on the Colorado River below Glen Canyon Dam. H. R. 9752, a similar bill which was passed earlier as reported, was tabled. pp. 18598, 18611-2, 18623

13. ADMINISTRATIVE LAW. Passed as reported S. 1664, to provide for continuous improvement of the administrative procedure of Federal agencies by creating an Administrative Conference of the U. S. pp. 18613-23
14. PACIFIC ISLANDS. Concurred in the Senate amendments to H. R. 3198, to promote the economic and social development of the Trust Territory of the Pacific Islands. This bill will now be sent to the President. p. 18629
15. INDEPENDENT OFFICES APPROPRIATION BILL, 1965. Received the conference report on this bill, H. R. 11296 (H. Rept. 1781). pp. 18588-94, 18669
16. PUBLIC WORKS APPROPRIATION BILL, 1965. Conferees were appointed on this bill, H. R. 11579. Senate conferees have already been appointed. p. 18575
17. WILDLIFE. The Merchant Marine and Fisheries Committee reported with amendment H. R. 2392, to initiate a program for the conservation, development, and enhancement of the Nation's anadromous fish in cooperation with States. (H. Rept. 1768). p. 18669
18. FOOD ADDITIVES. The Interstate and Foreign Commerce Committee reported without amendment H. R. 12033, to further amend the transitional provisions of the act of 1958 prohibiting the use of food additives which have not been adequately tested to establish their safety (H. Rept. 1770). p. 18669
19. RECLAMATION. The Interior and Insular Affairs Committee reported with amendment H. R. 1712, to authorize the Crooked River Federal reclamation project to provide for the irrigation of additional lands (H. Rept. 1778). p. 18669
20. LANDS. The Interior and Insular Affairs Committee voted to report (but did not actually report) H. R. 8526, amended, relating to the issuance of patents for lands held under color of title, to liberalize the requirements for the conveyance of the mineral estate. p. D682
21. ROADS AND TRAILS. The Interior and Insular Affairs Committee voted to report (but did not actually report) H. R. 12289, amended, to establish the Lewis and Clark Trail Commission. p. D683
22. TIME STANDARDS. The Interstate and Foreign Commerce Committee voted to report (but did not actually report) H. R. 11483, amended, to establish a uniform system of time standards and measurement and to promote the observance of such time standards for all purposes. p. D683
23. PERSONNEL. A subcommittee of the Post Office and Civil Service Committee voted to report to the full committee H. R. 5376, to provide for the inclusion in computation of accredited service for retirement purposes, of certain periods of service rendered States or instrumentalities of States; and H. R. 8544, to extend the benefits of the Annual and Sick Leave Act of 1951, Veterans' Preference Act of 1944, and Classification Act of 1949. p. D683
24. ADMINISTRATIVE LAW. A subcommittee of the Judiciary Committee voted to report to the full committee S. 1466, amended, to provide for the right of persons to be represented by attorneys in matters before Federal agencies. p. D683

25. APPROPRIATIONS; POVERTY. Received from the President an appropriation estimate for the fiscal year 1965 in the amount of \$947,500,000 to finance the programs authorized by the Economic Opportunity Act of 1964 (H. Doc. 337). p. 18669
26. GUAM. The "Daily Digest" states that the Rules Committee granted an open rule, with 1 hour of debate, on H. R. 3869, to provide technical agricultural assistance to Guam, making it in order to substitute S. 692 in lieu thereof. p. D683
27. COFFEE. The "Daily Digest" states that conferees agreed to file a conference report on H. R. 8864, to implement the International Coffee Agreement. p. D. 684
28. RESEARCH. The "Daily Digest" states that conferees agreed to file a conference report on H. R. 4364, providing for duty-free entry of a mass spectrometer for Oregon State and Wayne State universities. p. D684
29. MEAT IMPORTS. Rep. Olsen, Mont., expressed his support for sending H. R. 1839, the meat-import restriction bill, to conference, and inserted Rep. Colmer's statement requesting the conference. pp. 18629-31
30. POVERTY. Rep. Williams explained the loyalty-oath amendments he offered to the poverty bill. p. 18631
31. RIVERS AND HARBORS. Rep. Hull inserted resolutions adopted by the National Rivers and Harbors Congress. p. 18637
32. APPALACHIA. Rep. Schwengel described a tour he made of the Appalachian region in order to secure first-hand knowledge of the situation, and inserted testimony gathered on the tour. pp. 18658-9
33. HOLIDAY. Rep. Rooney, N. Y., inserted his statement favoring legislation making Columbus Day, Oct. 12, a national holiday. p. 18659

ITEMS IN APPENDIX

34. FOREIGN AID. Rep. Olsen, Minn., inserted an article, "The Human Side of Foreign Aid," which cites the impact our foreign aid is having on the recipient nations. pp. A4266-7
35. WHEAT. Extension of remarks of Rep. Burton inserting a satirical article on the wheat deal with Russia, "Happiness is a Wheat Deal With Hungry Russians." p. A4270
36. POVERTY. Speech in the House by Rep. Burton expressing his support for the poverty bill. p. A4273
37. OPINION POLL. Rep. Cleveland inserted the results of a questionnaire, including items of interest to this Department. pp. A4275-6

BILLS INTRODUCED

38. HEALTH. H. R. 12350, by Rep. Burton, Calif., to provide a program of national health insurance; to Interstate and Foreign Commerce Committee.
39. PATENTS. H. R. 12354, by Rep. St. Onge, for the general revision of the copyright law, title 17 of the United States Code; to Judiciary Committee.

As the Representative of the 13th Congressional District of Illinois, the home of the nationally known Hadley School for the Blind in Winnetka, Ill., I have had a continuing interest in the problems of the blind. In this connection, I wish to call the attention of the Members of the House to a bill which I introduced on October 2, 1963, H.R. 8695. This bill was brought into being primarily because of the development by the Hadley School for the Blind of a portable physics laboratory for use in home study education of the blind, the first such kit of its kind, which unfortunately, because of its special nature, exceeds the current maximum size and weight limitations for mailing purposes. It was hoped an exception could be made to permit the Hadley School to provide its blind students with this necessary adjunct of a newly offered course in physics. It is my hope that the provisions of this bill will be given favorable attention by the House Committee on Post Office and Civil Service and by the Members of this distinguished body.

The bill was ordered to be engrossed and read a third time, was read the third time and passed.

The title was amended so as to read: "A bill to amend section 403(b) of the Federal Aviation Act of 1958 to permit the granting of free transportation to guides or dog guides accompanying totally blind persons."

A motion to reconsider was laid on the table.

COMPACTS BETWEEN STATES TO PROMOTE HIGHWAY TRAFFIC SAFETY

Mr. HARRIS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (S. 2318) to amend the joint resolution approved August 20, 1958, granting the consent of Congress to the several States to negotiate and enter into compacts for the purpose of promoting highway traffic safety.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from Arkansas?

There was no objection.

The Clerk read the bill, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the joint resolution approved August 20, 1958 (72 Stat. 635), is amended by inserting in the resolving clause after the word "States" the phrase ", and one or more of the several States and the District of Columbia,".

(Mr. HARRIS asked and was given permission to revise and extend his remarks.)

Mr. SICKLES. Mr. Speaker, I rise in support of S. 2318 and to compliment the chairman of the committee, the gentleman from Arkansas [Mr. HARRIS], for bringing it to the floor at this time. I particularly want to express my appreciation to the chairman of the subcommittee, the gentleman from Alabama [Mr. ROBERTS], for his activities and work in connection with this bill and to commend his support and efforts which have brought about the consideration of

this bill. I am the sponsor of H.R. 9642 introduced in this House on January 15, 1964, which is identical to the bill now before us.

The immediate effect of this bill is to allow the District of Columbia and the State of Maryland to enter an agreement now being considered by the parties which would permit law-enforcement officers of both jurisdictions to issue citations to residents of the other jurisdiction for violations of such traffic regulations as are covered by the agreement rather than require the nonresident to post collateral. Just this weekend I was visited at my home by a gentleman who could not understand why he had to be locked up in the District of Columbia until a friend could be found to provide the collateral for a traffic violation just because he lived a mile over the District line in Maryland.

And what the bill does is merely to grant to the District of Columbia government the same consent of Congress which was granted to the States in 1958 to negotiate and enter into compacts for promoting highway traffic safety. It is, therefore, in the nature of legislative oversight legislation.

Of course the authority granted to the District of Columbia is not confined to the agreement under consideration since the law amended—Public Law 85-684—envisions a broad range of agreements or compacts. Some 25 States have entered into compacts relating to vehicle equipment and 12 States have also entered into compacts relating to driver licensing.

Mr. Speaker, this is a significant step in the most important area of highway traffic safety. I urge my colleagues to support this bill.

GENERAL LEAVE TO EXTEND

Mr. HARRIS. Mr. Speaker, I ask unanimous consent that all Members may have permission to extend their remarks at this point in the Record.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arkansas?

There was no objection.

The bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

ESTABLISHING AN ADMINISTRATIVE CONFERENCE IN THE UNITED STATES

Mr. ELLIOTT. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 824, and ask for its immediate consideration.

The Clerk read the resolution, as follows:

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (S. 1664) to provide for continuous improvement of the administrative procedure of Federal agencies by creating an Administrative Conference of the United States, and for other purposes. After general debate, which shall be confined to the bill and shall continue not to exceed one hour, to be equally divided and controlled by the chair-

man and ranking minority member of the Committee on the Judiciary, the bill shall be read for amendment under the five-minute rule. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

Mr. ELLIOTT. Mr. Speaker, I yield myself such time as I may require, after which I shall yield 30 minutes to the gentleman from Ohio [Mr. BROWN].

Mr. Speaker, House Resolution 824 provides for the consideration of S. 1664, a bill to provide for continuous improvement of the administrative procedure of Federal agencies by creating an Administrative Conference of the United States and for other purposes. The resolution provides an open rule with 1 hour of general debate.

Mr. Speaker, the purpose of S. 1664 is to provide permanent machinery whereby the Federal agencies with assistance from non-Government authorities on administrative practice will be able to formulate recommendations to improve Government procedures cutting down time and costs while preserving due process of law. A permanent conference will provide continuity for the kind of work performed by the two temporary administrative conferences appointed by President Eisenhower and President Kennedy respectively. The Conference would stand in similar relationship to the agencies as the Judicial Conference stands to the Federal courts.

Mr. Speaker, I understand that the bill, S. 1664, will come to the House with the unanimous approval of the subcommittee and of the Committee on the Judiciary itself and by a unanimous vote of the House Committee on Rules.

I urge the adoption of House Resolution 824.

Mr. Speaker, I reserve the balance of my time.

Mr. BROWN of Ohio. Mr. Speaker, I yield myself such time as I may use.

(Mr. BROWN of Ohio asked and was given permission to revise and extend his remarks.)

Mr. BROWN of Ohio. Mr. Speaker, as the gentleman from Alabama has explained House Resolution 824 makes in order the consideration of the bill S. 1664, a bill to provide for continuous improvement of the administrative procedure of Federal agencies by creating an Administrative Conference of the United States, and for other purposes.

This bill, in my opinion, and in the opinion of its sponsors and those who have studied the measure meets a very great need. There is a real demand for an improvement in the administrative procedure of the various Federal agencies by having this Administrative Conference officially established. We have had some officials meeting at different times in different agencies in an unofficial way to try to work out better administrative procedure. Almost every agency of the Government, almost every Federal department, the American Bar Association, and many other similar or-

ganizations feel that problems of representing the American people in their various contacts with administrative agencies of the Federal Government would be helped by this legislation, and that it is actually very much needed.

The Committee on the Judiciary has given long consideration to this matter. It has reported S. 1664 by unanimous vote. The Rules Committee which heard testimony on the measure were unanimous in reporting this rule. I know of no opposition either to the rule itself or to the measure.

Mr. GROSS. Mr. Speaker, will the gentleman yield?

Mr. BROWN of Ohio. I yield to the gentleman from Iowa.

Mr. GROSS. Mr. Speaker, I will say to the gentleman that I have a number of questions to ask about this bill. This is a move to create another commission in Government, this one with a chairman to be appointed for 5 years. If I read the bill correctly there is \$250,000 a year provided for at least 5 years and probably on into eternity. I do not take this kind of bill lightly because I say again that it apparently means the creation of another permanent commission in Government.

There are agencies of the Government that ought to be doing what is proposed that this Commission or Conference to do, and that is recommend needed reforms.

Mr. BROWN of Ohio. There is a strong feeling that while this may carry some expense it will save a great deal of money in the long run, not only for the agencies but for various citizens as well who must deal with these agencies and departments of Government. I might add that if the gentleman will wait just a few hours he may have other legislation before him that will create new agencies of Government and new commissions which can be criticized more properly, perhaps, than this measure itself; and I will be happy to join with him at that time.

Mr. GROSS. Mr. Speaker, will the gentleman yield further?

Mr. BROWN of Ohio. Yes, I yield further to the gentleman from Iowa.

Mr. GROSS. Well, only a few days ago the House passed a bill to create a National Commission on Technology, Automation, and Economic Progress.

Mr. BROWN of Ohio. And, I joined with the gentleman from Iowa as one of the minority that opposed that matter. But I do feel that this legislation is justified and is badly needed. We can simplify the administrative procedure for the benefit of the people who must deal with this myriad of agencies which we have in the Federal Government. If we can work out some sensible approach to these problems, I believe it will be worth the amount it will cost, and more too.

In addition, this is one of the few bills of this type that I personally feel I can support and do support.

Mr. GROSS. Will the gentleman yield further, briefly?

Mr. BROWN of Ohio. I yield further to my dear friend from Iowa.

Mr. GROSS. How about providing this chairman a term of 3 instead of 5 years?

Mr. BROWN of Ohio. It would be perfectly all right with me. I am not too much interested in the welfare of chairmen anyway. I think ranking members are always better than chairmen, but we do not always prevail.

Mr. Speaker, I have no further requests for time.

Mr. ELLIOTT. Mr. Speaker, I move the previous question.

The previous question was ordered.

The SPEAKER. The question is on the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

IN THE COMMITTEE OF THE WHOLE

Mr. WILLIS. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (S. 1664) to provide for continuous improvement of the administrative procedure of Federal agencies by creating an Administrative Conference of the United States, and for other purposes.

The SPEAKER. The question is on the motion offered by the gentleman from Louisiana.

The motion was agreed to.

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill S. 1664, with Mr. ELLIOTT in the chair.

The Clerk read the title of the bill.

By unanimous consent the first reading of the bill was dispensed with.

The CHAIRMAN. Under the rule the gentleman from Louisiana [Mr. WILLIS] will be recognized for 30 minutes and the gentleman from Ohio [Mr. McCULLOCH] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Louisiana [Mr. WILLIS].

Mr. WILLIS. Mr. Chairman, I yield myself 10 minutes.

(Mr. WILLIS asked and was given permission to revise and extend his remarks.)

Mr. WILLIS. Mr. Chairman, the bill, S. 1664, would create a permanent Administrative Conference of the United States.

PURPOSE

The purpose of S. 1664 is to establish permanent machinery whereby the many Federal agencies can, with assistance from non-Government authorities on administrative practice, formulate recommendations to improve Government procedures, cut down time and costs, while preserving due process of law. A permanent Administrative Conference will provide continuity to the kind of work performed by the two temporary administrative conferences appointed by President Eisenhower—1954–55—and President Kennedy—1961–62. The Conference would stand in similar relationship to the Federal agencies as the Judicial Conference stands to the Federal courts.

NO ENFORCEMENT POWER

Let me emphasize that the power of this permanent Administrative Conference will be limited to study and recommendation; it will have no power whatever to enforce its recommendations. Its recommendations will go to the Congress, the President and/or the Judicial Conference and its jurisdiction will conform generally to that of the Administrative Procedure Act.

LOW COST

I would emphasize also that the cost of this Conference would be modest. Appropriations are limited to \$250,000—section 7.

COMPOSITION

Under S. 1664, the Conference would consist of a Chairman, a Council, and an Assembly.

Only the Chairman would be full time, being appointed by the President subject to Senate confirmation.

An 11-man Council would consist of the Chairman and 10 members appointed by the President for 3-year terms.

The main body of the Conference would be the Assembly, consisting of the Chairman, the Council, and a flexible number of Government and non-Government members.

SUPPORT FOR MEASURE

The proposal for a permanent Administrative Conference has the support of the Judicial Conference, the Chief Justice, the American Bar Association, the District of Columbia Bar Association, Chairman OREN HARRIS—who introduced similar House bills—and the Budget Bureau, plus a long list of Government agencies—including CAB, FCC, FPC, FTC, ICC, NLRB, SEC, AEC, HEW, Treasury, Maritime Administration, and FAA.

The subcommittee hearings took testimony from Chairman OREN HARRIS, Judge Prettyman, and representatives of the bar associations, and of the Budget Bureau in support of the proposal. No opposition has been registered except to details.

COMMITTEE AMENDMENTS

Amendment No. 1 excludes military and foreign affairs functions of the United States from the definition of "administrative program." This conforms to Judge Prettyman's testimony that it was not contemplated that the Conference would have any jurisdiction over military or foreign affairs.

Primarily, the committee amendments place limits on the total number of Conference members and assure that Government members shall preponderate, but not too overwhelmingly.

Composition of the Conference: Amendments Nos. 2, 3, 5, and 6 provide:

(1) The total Conference shall not exceed 91 members (a complement recommended by Judge Prettyman) nor be less than 75 members.

(2) The Council is to comprise the Chairman, plus five Government and five non-Government members (as provided by President Kennedy).

(3) Non-Government members (other than Council members) are not to exceed 36 and shall not be more than two-fifths nor less than one-third of all members.

So that out of a total Conference of 75, the maximum number of non-Government members including the 5 Council members would be approximately 46.6 percent—35 out of 75 members.

Out of a total Conference of 91 members, the minimum number of non-Government members, including 5 Council members would be 39.5 percent—36 out of 91.

Amendment No. 8 has two effects:

(1) It removes a requirement that a member shall participate in his "Individual capacity and not as a representative of any governmental or nongovernmental organization." The committee was concerned lest this requirement be thought to prohibit agency personnel or, for that matter, non-Government personnel from recognizing problems encountered by their own agency or outside organizations. While the committee expects Conference members to exercise intellectual independence, it was believed best to omit any instruction on this point.

(2) It removes a conflict of interest exemption that is not needed. The bill states that non-Government Conference members shall be "special Government employees" within the meaning of the conflict of interest statute. However, persons hired to work less than 130 days in any year are already defined as "special Government employees" (18 U.S.C. 202). It is contemplated that non-Government Conference members will be appointed to work substantially less than 130 days per year; thus the exemption is not needed by them. The interpretation of the applicability of the conflict of interest law, in this regard, will not be affected by the fact that Conference members are appointed for 2-year terms. On the other hand, no reason appears why Conference members, in the unlikely circumstance in which they are appointed to work more than 130 days in a year, should be dealt with more leniently as to conflicts of interest than other persons so appointed to Government posts.

Amendment No. 7 eliminates a requirement that a conference report on agency compliance with its recommendations. The committee was concerned lest this requirement be considered to attribute the weight of law to Conference recommendations. The requirement was deleted since the purpose of this legislation is to establish machinery to formulate, not impose, recommendations designed to improve administrative procedure.

Of course, as provided in section 5 of the bill, reports of the Conference will include studies of, and statistical data on, agency procedure. These studies can be expected to include reports on the consideration given by agencies to Conference recommendations.

Mr. HARRIS. Mr. Chairman, will the gentleman yield?

Mr. WILLIS. I am glad to yield to the gentleman from Arkansas.

Mr. HARRIS. Mr. Chairman, first I want to compliment the gentleman and the great Committee on the Judiciary for the consideration that has been given to this most important legislation.

Mr. Chairman, it is a matter of deep gratification to me that the House is considering today legislation to establish a permanent Administrative Conference of the United States. This legislation

has been long overdue. It has followed a tortuous road and it has taken a great deal of ingenuity and patience to bring together the various views which have been held on ways and means to improve the administrative processes of the departments and agencies of our Federal Government.

In a sense this legislation goes back to the days when the Congress after many years of study and deliberation enacted the Administrative Procedures Act. Following the enactment of that law, many of you will recall attempts to establish special committees of the Congress vested with jurisdiction over the regulatory activities of our Federal agencies.

Many of you will recall that one of these committees was the Legislative Oversight Subcommittee, which was established at the urging of our late beloved Speaker Rayburn for the purpose of determining whether the independent regulatory agencies were carrying out the laws as enacted by the Congress.

I had the responsibility of serving as chairman of the Legislative Oversight Subcommittee of the Committee on Interstate and Foreign Commerce. We investigated the activities of several of the six great independent regulatory agencies which come within the jurisdiction of our committee. We found in the course of our investigations that the procedures followed by some of these agencies invited improper influence and ex parte communications.

Upon conclusion of our investigation our Committee on Interstate and Foreign Commerce considered legislation to modify the procedures of these agencies in order to prevent ex parte communications. However, we found that the needs of these agencies with regard to organization and procedure were so different that it was difficult, if not impossible, to prescribe by statute procedures for all of them which would have precluded ex parte communications and other improper methods of influencing the decisions of these agencies.

About this time President Eisenhower by Executive order created a temporary Administrative Conference. Our late President Kennedy continued that Conference, and I had the privilege of serving as a congressional member of that Conference. Judge Prettyman, the eminent jurist, formerly on the U.S. Circuit Court of Appeals for the District of Columbia, was the chairman of the Conference, and it is largely due to his loyal, tenacious, and astute leadership that the Conference was a great success.

When our committee found that it would be exceedingly difficult to legislate on the question of ex parte communications I addressed a letter to Judge Prettyman, requesting him to submit the legislation pending before our committee to the Conference for its review and advice.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., December 15, 1961.
Judge E. BARRETT PRETTYMAN,
Chairman, Administrative Conference of the
United States, Department of Justice,
Washington, D.C.

MY DEAR JUDGE PRETTYMAN: This committee has pending before it a bill, H.R. 14, which proposes the enactment of the

"Independent Regulatory Agencies Act of 1961" and which deals, among others, with the subject of ex parte communications in the case of on-the-record proceedings.

This bill is a reintroduction of a bill, H.R. 12731, which was reported unanimously by this committee during the 86th Congress. I am most anxious to have the principles which are incorporated in this bill considered by the Administrative Conference since the problems with which it seeks to deal are most complex and highly controversial.

I am enclosing for your information copies of H.R. 14, 87th Congress; H.R. 12731, 86th Congress; and House Report 2070, 86th Congress, together with copies of the hearings which this committee has held on this bill.

I am aware of the fact that the bill proposes to deal only with the procedures of the six major independent regulatory agencies. I feel strongly that a start in dealing with the problem of ex parte communications has to be made somewhere, and since the proceedings conducted by these agencies are of particular importance to the American people, appropriate legislation applicable to these agencies should be enacted. After actual experience has demonstrated the merits of this legislation, it might then at a later date be extended to apply to other agencies.

Our committee has spent a good deal of time in consideration of this legislation and the prospect for its passage would certainly be enhanced by the support of the Administrative Conference. The committee, of course, will be glad to have any suggestions for amendments which the Conference or any of its committees may deem desirable.

Sincerely yours,

OREN HARRIS,
Chairman.

The Conference did an exceedingly careful job and concluded as we had before—that the regulation of agency procedure had better be left to agency rules of the individual agencies as long as these rules were in conformity with general principles. The Administrative Conference proceeded to elaborate these principles and I am glad to say that the majority of the six agencies which come within our committee's jurisdiction have adopted agency rules for their respective agencies which deal in detail with the question of prohibited ex parte communications.

Mr. Chairman, what has been accomplished in the field of ex parte communications is merely an example of what can be accomplished by a permanent Administrative Conference. Within the framework of such a conference, under competent leadership, it should be possible for the agency heads and for interested private practitioners and academic personnel to work out many of the problems which urgently require attention. Our congressional committees are so busy with the substantive problems affecting the industries which are subject to regulation by these agencies that little time often remains to deal with the complex procedural problems which are of great importance if the agency procedures are to be efficient and equitable.

Of course, it should be clearly understood that no authority to modify any statutory provisions is being delegated to the Administrative Conference by this legislation. The Conference has only authority to study problems and if the study discloses a need for changes in any

statutory provisions, the Conference will submit its recommendations to the Congress for appropriate action. In the case of ex parte communications, of course, each agency has not only the authority but the responsibility to protect the integrity of its administrative processes. Therefore, the temporary Administrative Conference was in a position to make recommendations to the agencies, and the agencies thereupon used their statutory authority to promulgate appropriate rules to carry out the recommendations of the Conference.

I myself introduced two bills which were referred to the Committee on the Judiciary. H.R. 7200 was a bill which had the support of the executive branch, and H.R. 7201 was a similar bill which was favored by the American Bar Association. The differences between these two bills largely related to the ratio of Government representatives to non-Government representatives who would be constituting the Administrative Conference.

Mr. Chairman, I am glad to say that these differences have been worked out in a satisfactory manner in the bill, S. 1664, which is now the pending business of the House. I want to congratulate the able Chairman of the subcommittee, the gentleman from Louisiana [Mr. WILLIS] and the eminent chairman of the full committee, the gentleman from New York [Mr. CELLER] for having taken time from their busy committee schedules to give attention to this legislation. I was given the privilege of testifying before the subcommittee when it held hearings on all bills on this subject pending before it, and I want to express again my gratification that a bill has been ordered reported to the House which deserves the complete support of the membership of this body.

This bill deserves the support of the membership because it is a good bill. It will strengthen the administrative procedures of our Federal departments and agencies. It will thereby benefit greatly the general public.

A lot of hard work has gone into this legislation and I hope this House will support this legislation by an overwhelming vote for the reasons which I have stated.

(Mr. HARRIS asked and was given permission to revise and extend his remarks.)

Mr. WILLIS. I well remember the gentleman's work in the study of the various oversight committees. I will never forget when that study was suggested by the late great Speaker of the House, Sam Rayburn. It was due to that work that the bill was brought up. I will say to the membership of the Committee of the Whole that the gentleman from Arkansas is one of the architects of this proposal.

Mr. WAGGONER. Mr. Chairman, will the gentleman yield?

Mr. WILLIS. I yield to the gentleman from Louisiana.

Mr. WAGGONER. I thank the gentleman for yielding.

Mr. Chairman, at this time I want to express my appreciation to the distinguished chairman of the subcommittee,

[Mr. WILLIS], my colleague from Louisiana, for the work he has done in this particular instance. I usually look with much reluctance on the creation of another government agency or commission because too often they serve no useful purpose, but in this particular instance I think there is a valuable service to be done. This administration conference should be established for many reasons but especially to protect the private citizens and the public interest.

I want to associate myself with the remarks of my colleague from Louisiana in expressing his appreciation of the interest shown by my colleague from Arkansas [Mr. HARRIS]. He too has been instrumental in framing this legislation. The State of Arkansas is fortunate in having OREN HARRIS represent them. I am well aware of the sincere desire of the gentleman from Arkansas [Mr. HARRIS] to protect fully the private rights of individuals in the administration of Government affairs by the respective agencies. I share this desire with him. I know he is interested in providing a broad representation for not only the people of his district, whom he so ably represents as chairman of the House Committee on Interstate and Foreign Commerce, but in protecting the views and the individual rights of all the private citizens of this country. He continually utilizes his diverse experience as a member of the bar and Member of this Congress in so doing. He certainly does this in a sterling manner. He is a student of government and administrative law and utilizes that experience every day as does ED WILLIS, my colleague from Louisiana, in the public interest. It is because of the concern of gentlemen like Mr. HARRIS and Mr. WILLIS that we are making a sincere effort here today to protect the rights of our private citizens and we all know they need protection, in their dealings with the Government and the overall administrative affairs of the Government by our support of this administrative conference. I am especially glad that the good people of Arkansas have seen fit to return him to this body. He is indeed a valuable member.

(Mr. WAGGONER and Mr. WILLIS asked and were given permission to revise and extend their remarks.)

Mr. McCULLOCH. Mr. Chairman, I yield such time as he may desire to the gentleman from New Jersey [Mr. CAHILL].

Mr. CAHILL. Mr. Chairman, I want to reaffirm what the chairman of the subcommittee has told the House in regard to this legislation. First of all, let me say that this bill came from the subcommittee by a unanimous vote. It likewise was reported unanimously by the full committee. I suppose there is no legislation that comes before this House that has the unanimous approval of all Members, but it does seem to me that this probably will come as close as any piece of legislation can.

This not only has the support of all the regulatory agencies of the U.S. Government, it has the support of the non-governmental organizations who represent thousands of people who actively appear before these agencies. Among

these latter groups we will find the American Bar Association as an enthusiastic advocate.

Therefore, it seems to me Mr. Chairman and Members, that this bill indeed serves a very useful purpose. One of the best features of it, in my judgment, is the mandate contained in the legislation that at least 33 1/3 to 40 percent of the membership shall at all times be composed of members outside of Government service. It seems to me that this is the way those of us who in the past and at the present have been and are critical of governmental agencies and the mass of redtape that sometimes is involved in dealing with them, can bring the fresh viewpoint of the objective civilian expert in an effort to recommend to the proper committees of this Congress improvements such as were outlined by the distinguished chairman of the Committee on Interstate and Foreign Commerce, the gentleman from Arkansas [Mr. HARRIS].

So I would say to you that while there is some money involved and while this will cost dollars and cents, the money that is spent will be well spent and I think it will be made up by the improvements that should come if the fresh viewpoint is utilized and implemented.

Certainly, if there is one bill that will be helpful to the taxpayers and to the litigants and to the applicants who appear before the governmental agencies, it should be this bill.

Now let me conclude by saying that this certainly is not going to be any panacea for all of the evils or for all of the wrongs that exist, but it certainly should be a step forward in the attempt to continue improvement of the services that are rendered by our governmental agencies.

Since it does meet with the approval of the minority members of the Committee on the Judiciary and since all of the members of the subcommittee headed by the gentleman from Louisiana [Mr. WILLIS] have approved it, I certainly recommend it for passage to the House of Representatives.

(Mr. CAHILL asked and was given permission to revise and extend his remarks.)

[Mr. LINDSAY'S remarks will appear hereafter in the Appendix.]

Mr. McCULLOCH. Mr. Chairman, I yield 5 minutes to the gentleman from Iowa [Mr. GROSS].

(Mr. GROSS asked and was given permission to revise and extend his remarks.)

Mr. GROSS. Mr. Chairman, thus far I have no specifics on what this administrative conference, as it is called, is going to do. I look at it as another commission or bureau in the Government. What specifically is it going to do?

The gentleman from Arkansas, the distinguished chairman of the Committee on Interstate and Foreign Commerce, referred back, or at least I assume he referred back to the old Goldfine-Sherman Adams deal and the part that was played by his Oversight Committee in that. Am I correct in assuming that that is what the gentleman was referring to a moment ago?

Mr. HARRIS. Mr. Chairman, will the gentleman yield?

Mr. GROSS. I yield to the gentleman.

Mr. HARRIS. Of course, those matters that the gentleman mentions were a consideration of the committee at that time. But what I had reference to was the study and consideration we gave to the procedures and administrative standards of the agencies themselves, that is, the six major agencies. Various reports were issued during 1959 and 1960 and many of the recommendations that we made in those reports have already been enacted into law as to the organization and administration of these various agencies. Some have been enacted by the Congress such as the FCC Act and the Interstate Act and amendments thereto.

What we have in mind here is not so much those things which indicate matters we do not like to see happen in our society but more with respect to delays in administrative procedures. People who go before these agencies are entitled to consideration of the matter pending.

Mr. GROSS. Could not the standing committees of the Congress consider legislation, without spending \$250,000 a year to hire a group to tell them what to do? This information is available to the committees of Congress. It was available to the gentleman's committee. At least, some of the information upon which the gentleman's recommendations were based came from the Goldfine-Sherman Adams business; is that not true?

Mr. HARRIS. That is true. I repeat that we have in mind more the administrative actions of these agencies in determining the innumerable cases pending before them. We did of course develop information in reports, after hearings, during the 3 years we had this matter under consideration. We are referring to matters of administrative procedures.

We learned, after the experience which the gentleman from Louisiana so well described—after the experience of the temporary conferences which have been carried on for the past 5 years—that these are helpful and will save money, as mentioned by the gentleman from Ohio [Mr. BROWN] earlier this afternoon.

Mr. GROSS. Well, there are situations in Government today which badly need attention. We know where they are. Nothing is being done about them. Always we go outside and hire others to tell us what we should do.

The thing which concerns me the most is that we are continually establishing commissions and conferences, as is being done in this case, apparently to rub our noses in something we have already smelled and know about.

I do not understand why we should spend \$250,000 a year, or perhaps more, on a situation of this kind, for the establishment of still another group.

There is a situation over in the White House today. A witness has testified under oath that an adviser to President Johnson has taken part in certain activities beyond his duties as a Federal employee. The Presidential adviser denies the charge. Obviously somebody has committed perjury.

Would this conference go into that, as the gentleman suggests it might have had there been such a conference in existence when the Goldfine-Sherman Adams thing came up?

There is a committee in the other body which should have gone into that situation, wherein someone obviously is committing perjury.

Mr. CAHILL. Mr. Chairman, will the gentleman yield?

Mr. GROSS. I yield to the gentleman from New Jersey.

Mr. CAHILL. I say to the gentleman from Iowa that I share to some degree his concern.

The CHAIRMAN. The time of the gentleman from Iowa has expired.

Mr. McCULLOCH. Mr. Chairman, I yield 5 additional minutes to the gentleman from Iowa.

Mr. CAHILL. Mr. Chairman, will the gentleman yield?

Mr. GROSS. I thank the gentleman for yielding additional time. I yield to the gentleman from New Jersey.

Mr. CAHILL. I would say to the gentleman, very respectfully, that the thought behind this bill, as I understand it, is to go beyond the governmental investigation and to go beyond what may be a limited vision on the part of those within Government, to seek a fresh viewpoint from individuals outside the Government appointed to such a committee.

I will say that this will depend, as always, not on what the legislation says but on what the Members do. It is therefore my hope that proper and qualified men will be appointed. If that is done and if these men devote the time to the Commission which the committee intends them to devote to it, and if they do the job the committee expects them to do, it would be my hope there would be some good which would come out of it.

Mr. GROSS. Let me say to the gentleman, with all respect to him, that he has been very "iffy" in his presentation as to what he expects this Administrative Conference to do. I point out that in your own report you state that there was a temporary conference in 1954-55 and this report says that it produced many worthwhile recommendations, but practically none of these recommendations were implemented. Then President Kennedy came back in 1961-62 with another temporary Administrative Conference. Your report says that one of its strongest recommendations was for the establishment of a permanent Administrative Conference of the United States. Now, somebody tell me what you expect to get from this Conference. There have been two temporary Conferences. Neither one of them apparently amounted to very much. I do not know how much money we spent on them. What reason have we to think that another Administrative Conference is going to produce any better results than the two you have already had?

Mr. WILLIS. Mr. Chairman, will the gentleman yield?

Mr. GROSS. I yield to the gentleman from Louisiana.

Mr. WILLIS. Of course, no one can give that assurance, but I can explain to the gentleman. The purpose of the act is to provide suitable arrangements through which Government agencies assisted by outside experts may cooperatively study mutual problems, exchange information, and develop recommendations for action by proper authorities to the end that private rights may be fully protected and regulatory activities and other Federal responsibilities may be carried out expeditiously and in the public interest. Those programs include any Federal function which involves the protection of the public interest and a determination of the rights, privileges, and obligations of private persons through rulemaking adjudication, licensing, and so on.

Those are the general objectives and are necessarily stated in these general terms. It will involve such things, for instance, and also the study of the efficiency, adequacy, and fairness of the administrative procedure before these agencies. Right now, if you apply, let us say, for a license for a TV station, are the rules adequate? Are the procedures too slow? Is there too much redtape? Is the cost too heavy? And so on. This does not involve one agency but all of the agencies of the Government. That is why at long last there are several things about this that please me. One, they have no power to impose rules and, two, we bring in, as my good friend from New Jersey says, non-Government people into this business.

Mr. GROSS. This raises an interesting question. The gentleman brings in the Federal Communications Commission and the allocation and granting, I assume, of TV and radio licenses. I wonder if this proposed Conference is supposed to or would go into the question of the TV monopoly operated by the Johnson family in Austin, Tex.

Mr. WILLIS. Of course not.

Mr. GROSS. Would this not be a part of their job?

Mr. WILLIS. No, it would not be. It would not be.

Mr. GROSS. Then, where would the Administrative Conference stop in the matter of how licenses are allocated and granted, and so on and so forth?

Mr. WILLIS. I agree that this is legalistic language, but we have to have it. This is to improve the procedures before these agencies in order to render better service at a cheaper price to the public.

The CHAIRMAN. The time of the gentleman from Iowa has again expired.

Mr. GROSS. Mr. Chairman, will someone yield me more time or must I wait until I can get time under the 5-minute rule?

Mr. McCULLOCH. Mr. Chairman, we always try to be generous in yielding time, and we are happy to yield another 2 minutes to the gentleman from Iowa.

Mr. GROSS. Again I thank the gentleman.

Mr. WAGGONER. Mr. Chairman, will the gentleman yield?

Mr. GROSS. I cannot yield because I do not have sufficient time. If the gentleman on that side will yield me 2 or

3 minutes additional, I will be glad to yield.

Mr. WILLIS. I will be delighted to yield the gentleman 3 additional minutes to bring it up to 5 all together.

The CHAIRMAN. The gentleman from Iowa is recognized for 5 additional minutes.

Mr. WAGGONER. Mr. Chairman, will the gentleman yield?

Mr. GROSS. I am glad to yield to the gentleman.

Mr. WAGGONER. I thank the gentleman.

I understand the gentleman's concern but I think there is much to be said for the fact that somebody needs to look after the interests of the public who have dealings with agencies of the Government. I have a particular case in mind, for example, which quite possibly could be prevented with an Administrative Conference such as this. Yesterday a good friend of mine contacted me about some dealings with the FHA in attempting to purchase a home. This individual was denied the purchase of this home because it was felt by this Government agency that his income was insufficient to purchase this particular home valued at \$13,750.

I do not agree with this Government agency. This man has an income of \$9,600 a year. His obligations, including furniture notes, appliance notes, car notes, and everything else are only about \$2,200. He has money in the bank. And yet they say he does not have sufficient income to purchase a repossessed FHA home valued at \$13,750. I feel that this Government agency has not given proper consideration to the public interest or the interest of this private citizen. I question whose interest has been served and why? I think this Administrative Conference can be used to cure many cases similar to this in too many agencies. Administrative procedures must be streamlined and clarified.

Mr. GROSS. Mr. Chairman, let me say that as far as administrative procedure within the Federal Government is concerned we have the Bureau of the Budget which ought to be primarily concerned with administrative procedure. I do not know how this is going to implement the Bureau of the Budget in its operation. But let me get to a specific question. Is this going to deal with personnel in the Government and, if so, in what way? I believe personnel is mentioned in the report but I am not quite sure what this proposed Conference is supposed to do specifically with regard to Federal personnel.

Mr. WILLIS. Mr. Chairman, I would venture to express this opinion, that personnel as such would not be the function of the Conference, but the proper staffing of an agency—understaffing, overstaffing, quality, et cetera—could result in some recommendations that affect administrative procedure. But personnel as such would not come in, nor under the specific provisions of the bill—and I refer to page 3, lines 21 to 23—that the functions:

Shall not be construed to include the scope of agency responsibility as established by law or matters of substantive policy committed by law to agency discretion.

That is very important to a businessman.

Mr. GROSS. Somewhere in this report—I cannot locate it at the moment—I believe it is stated that they are going to look into personnel grievance procedures.

Mr. WILLIS. Not for the sake of determining whether the grievances are good or bad in themselves but insofar as there are procedures in an agency dealing with personnel matters, as grievances are disposed of under the procedure of an agency, I would say that this phase of administrative procedure and efficiency would, in my opinion, have to be considered to that extent.

Mr. GROSS. In the light of that statement I wonder why we do not find in the report accompanying this bill a statement of some kind from the Chairman of the Civil Service Commission, since you are going into the field of personnel and civil service.

Mr. WILLIS. Of course, I did not want to leave the impression—and if I did I am sorry, although I think I did not—that that would be the cornerstone or one of the major undertakings of the study. That would be a minor thing. But to the extent grievances have to do with procedure those procedures could be reviewed or studied.

Mr. Chairman, I yield 4 minutes to the gentleman from Mississippi [Mr. WILLIAMS].

(Mr. WILLIAMS asked and was given permission to revise and extend his remarks.)

Mr. WILLIAMS. Mr. Chairman, I want to congratulate the distinguished gentleman from Louisiana [Mr. WILLIS] and his associates for bringing this bill to the floor of the House. In my opinion, this legislation is much needed, and definitely in the public interest.

Now, like the gentleman from Iowa, I too am deeply disturbed over the present spending level in Government. As a matter of fact, I suspect I vote "no" about as often as my good friend from Iowa. I have often said that the gentleman from Iowa is a very valuable Member of this body and on many occasions I have said, and certainly not facetiously, that he might be, even, the most valuable Member of this body.

However, Mr. Chairman, in this instance I feel quite sure that the gentleman does not understand fully the potential of the Administrative Conference contemplated by this bill.

Mr. Chairman, I served on the old Legislative Oversight Committee during its first 2 years, and those were rather hectic years, as the members of the committee will recall. Those were the days of the Goldfine-Adams controversy, they were the days of the FCC controversy that involved Commissioner Mack and his friend, Mr. Whiteside.

Mr. Chairman, if I learned anything during those hearings, it was that reform in the activities of some of these regulatory agencies was imperative in the public interest. There was a pressing need to streamline their operations, and to set up administrative machinery to insure that their decisions would be determined purely and solely on the basis of the evidence presented.

I want to congratulate principally the distinguished chairman of my committee, the Committee on Interstate and Foreign Commerce, the gentleman from Arkansas [Mr. HARRIS] who provided the impetus for this bill.

Mr. Chairman, as chairman of the Oversight Subcommittee he worked with great diligence in the field of administrative law. I am certain that no Member of Congress, whether House or Senate, is as well informed on administrative and regulatory law as OREN HARRIS. He has been the author of much legislation which has improved the operations of our administrative agencies and has saved untold millions of dollars in redtape cost to the American taxpayers. He deserves the thanks and commendation of every American for his contributions to sound and efficient Government.

Mr. Chairman, for the benefit of the gentleman from Iowa, I can point out one case in particular which is still hanging fire after 3 years of litigation under the Administrative Procedures Act. The case is now in the courts and it is still undecided. This case involved one of our larger railroads and I am told that it has already cost them more than \$2 million in prosecuting their case. If it cost one of the parties that much, then goodness only knows how much it cost the Government in administrative costs over that period of 3 years.

It is my feeling, Mr. Chairman, that this legislation is definitely in the interest of economy. It is certainly sound and is a necessary step in the improvement of the administration of our regulatory system and the Administrative Procedures Act.

Mr. McCULLOCH. Mr. Chairman, I have no further request for time.

Mr. WILLIS. Mr. Chairman, I yield 5 minutes to the gentleman from California [Mr. HOLIFIELD].

(Mr. HOLIFIELD asked and was given permission to revise and extend his remarks.)

Mr. HOLIFIELD. Mr. Chairman, I very seldom speak on this floor, as the Members know, but I believe this is a very important bill and I want to compliment the committee. I want to also extend my compliments to the chairman of the Committee on Interstate and Foreign Commerce, because I know of his long interest in this matter.

Mr. Chairman, my interest in the functioning of the Administrative Procedures Act goes back to 1946 when the gentleman from Virginia, Judge HOWARD SMITH, was appointed as chairman of a committee to look into the actions of the administrative agencies which went beyond the scope and the purpose as intended by Congress.

It goes to a specific case in which the Home Loan Bank Board seized a savings and loan association at Long Beach, Calif. That case was under the Administrative Procedure Act for 16 years. I know that the Government must have spent at least \$1 or \$2 million fighting that case because the litigants on the savings and loan side also spent a considerable amount of money.

This case was investigated by JUDGE SMITH's committee; it was investigated by a subcommittee appointed in 1950

or 1951. I was chairman of that subcommittee. And more recently it was investigated by a subcommittee under the chairmanship of my colleague from California. There were three different investigations of the actions of an agency functioning under the Administrative Procedure Act.

Now, if the gentleman from Iowa will listen a minute, I would make this point: This comes also from my experience on the Hoover Commission, where we recommended continuing scrutiny of the functions of the different agencies under the Administrative Procedure Act. The businessmen of America today are functioning under countless rules and regulations, based on laws passed by Congress.

We pass a bill, say, with 30 to 60 pages, on the basis of the basic law we passed in the Congress, maybe after 2 or 3 months of consideration by a jurisdictional committee; then on that 30 to 60 pages the agencies build and enforce rules and regulations. And this is not because of bureaucracy altogether. Possibly the fault, if you want to call it a fault, is on account of the complicated nature of the businesses which are under regulation in this Nation. They are not simply businesses whose problems we can solve in a legal document. Back of that legal document is the necessity of promulgating administrative rules and regulations, and it is under these rules and regulations by the people in the agency that the American businessman and the American citizen gets into trouble because he operates under different rules than he would operate under in a court of equity.

The test of the Administrative Agencies Act as against an individual or a business is whether he acted within the scope of his delegated authority to promulgate rules and regulations, not whether he did what was right or wrong. You cannot get a decision in many instances on the basis of merit or what we call common equity. You have to in going through the Administrative Procedures Act test whether the administrator acted within the scope of his authority, not whether he did a good job, whether he did a bad job, whether he made the right decision or not, but did he have the authority to do it under his own wide administrative latitude of action.

The attempt to get into court has been most difficult without first going through the Administrative Procedures Act. And I will tell you the pitfall there.

This agency, the Home Loan Bank Board, in 1946 seized this institution and ran its assets down from \$60 million to \$14 million. They could not go into a court of equity. They had to first go through the Administrative Procedures Act route. But their appeal had to go to the people who seized them. So they refused to do this because they knew the people who seized them would verify the fact they had a right to do that. They became a victim of the basic act which allowed the agency to make rules and regulations without regard to the fairness of those regulations. This con-

troversy continued for 16 years, and it was decided only a year or two ago.

The point we are getting at is that the procedures under the Administrative Procedures Act functions are not by any means a perfect procedure. It needs looking into very carefully. They are continuously promulgating new rules and regulations, and the businessmen are being harassed by these rules and regulations. This needs continuing scrutiny.

I think from the standpoint of economy we can save many millions of dollars in Government costs, not to mention the costs incurred by the litigants against the Government.

More important, we can expedite hearings and decisions which have the effect of law but which are subject in many instances to years of delay. There is a truism which says, "Justice long delayed is justice denied."

We owe it to the business people who are facing bureaucratic delay and harassment throughout the land.

We owe it to our own democratic ideals to improve the efficiency and responsiveness of our governmental function.

I urge the adoption of the bill.

Mr. McCULLOCH. Mr. Chairman, I yield 5 minutes to the gentleman from Indiana [Mr. HARVEY].

Mr. HARVEY of Indiana. Mr. Chairman, I have been much interested in this proposal. I listened attentively to the very pertinent questions of the gentleman from Iowa. I also want to compliment him because it indicated that he has given a great deal of thought and attention to this problem.

When I first came to this Congress in the 80th Congress I served on the Committee on Government Operations. The gentleman from Illinois [Mr. DAWSON], the present chairman, was then I believe the ranking member on the committee. Our committee had the assignment of implementing the recommendations of the first Hoover Commission. If I might add in addition to what my good friend, the gentleman from California [Mr. HOLIFIELD] said, and we served on this subcommittee at least during the entire period of time I was on the committee, a matter of about 4 years, we served in an effort to implement these Hoover Commission recommendations.

The Hoover Commission functioned effectively in much the same manner I hope this Commission will function. The Hoover Commission had the assignment of making recommendations for streamlining our Government. About 39 major recommendations were finally enacted into law. The procedures were set up with which you are all familiar for bringing these recommendations into effect. The President would send up a recommendation and if it were not vetoed by either House it became automatically effective.

The thing that particularly struck me after having served in the Congress is with regard to our regulatory agencies. I am sure no one is more familiar with the problem than the gentleman from Arkansas [Mr. HARRIS], the chairman of

the Interstate and Foreign Commerce Committee, and the members of his committee. The thing that has come to my attention most forcefully is the fact that these regulatory agencies in many instances have been so dilatory, so reluctant to pass on matters of grave importance, they have been so unwilling to assume responsible decisions. That is exactly why I think, if I might add a word of suggestion as to where this Commission could best function, it certainly would be to help the Congress in unraveling this tangle we ourselves have created.

I know where applications for franchises made to the Federal Communications Commission have been kept dangling 4, 5, and 6 years, awaiting a decision. Many times people have had considerable sums of money invested, only to see them ultimately lost because of the unwillingness of this regulatory agency to give a prompt decision. I am sure in many cases had they been willing to do so they could have.

A growing percentage of our citizens are becoming more and more involved every year in the actions of these so-called regulatory agencies. As the gentleman from California has pointed out, in many instances they act not only as the judge but the jury. You appeal, and the people you appeal to are the same people who made the original decision, which to me seems a rather inconsistent way to operate.

So I certainly approve of this Commission and I know I join the gentleman from Iowa in hoping that the ultimate outcome of it will be to produce something of value. I do not want to seem to be cynical. I am not going to downgrade this Commission before it ever gets started. But I do want to give this word of warning, that unless capable people are appointed and unless they go to work constructively and vigorously, it will deteriorate into just another commission and we will pay the bill and no good will come of it.

Mr. WILLIS. Mr. Chairman, I yield 3 minutes to my friend, the gentleman from Florida [Mr. PEPPER].

Mr. PEPPER. I thank the able chairman very much for yielding to me.

Mr. Chairman, I wish to associate myself with my colleagues who have highly commended the distinguished gentleman from Arkansas [Mr. HARRIS] for what he has done with his committee to initiate legislation of the character that we have here before us today, and also to commend the very able gentleman from Louisiana [Mr. WILLIS] for all he has done to ready this measure for consideration and for bringing it to the floor of the House.

Mr. Chairman, we pride ourselves that this is a country of law and not of men. Yet, until the Administrative Procedures Act of the 1940's came into being, the decisions rendered by the administrative agencies and to a large degree the quasi-judicial tribunals of the Government of the United States were the arbitrary decisions of men and not decisions arrived at according to the elementary princi-

ples of the legal process where fair inquiry is conducted and impartial judgment thereon is rendered on the basis of the facts that are brought out before the tribunal trying the matter.

A great deal of progress therefore was made when the Congress enacted the Administrative Procedures Act. But none of us claims that it was perfect when created. Even experience has not given it the perfection that we desire it to attain.

Surely it is most desirable that able personnel both inside and outside of Government should as this bill provides study the efficiency, adequacy, and fairness of the administrative procedure used by administrative agencies in carrying out administrative programs and make recommendations to the Congress, to the President, to the judicial conference and other agencies of the Government for their improvement.

So, Mr. Chairman, it seems to me that the process of administration in a great Government such as ours is rather necessarily complex and that that administration will be greatly improved and the administrative judgment greatly expedited and put on a sounder basis by the advice and counsel that will come out of the study and the recommendations of this conference.

We, therefore, by passing this bill are taking another step toward making this Government as we hope some day it shall perfectly be, a government of law and not of men.

Mr. McCULLOCH. Mr. Chairman, I ask unanimous consent that the gentleman from New York [Mr. LINDSAY] may extend his remarks on the pending bill immediately following the remarks of the gentleman from New Jersey [Mr. CAHILL].

The CHAIRMAN. Without objection, it is so ordered.

There was no objection.

GENERAL LEAVE TO EXTEND

Mr. WILLIS. Mr. Chairman, I ask unanimous consent that all Members desiring to do so may extend their remarks at this point in the RECORD.

The CHAIRMAN. Without objection, it is so ordered.

There was no objection.

Mr. FASCELL. Mr. Chairman, because of its far-ranging functions and responsibilities, the Government of the United States must of necessity be a large and complicated organization. As a result primarily of the severe economic depression of the 1930's, World War II, and the staggering increase in our population in the past 15 or 20 years, much of the growth of the National Government has occurred within the past generation.

Inevitably, this rapid expansion of Federal functions and services has created considerable administrative upheaval, disorder, overlapping, and inefficiency. The needs of society must be met when they arise; they cannot always be handled administratively with the neatness of a textbook organization chart.

This House now has before it legislation, S. 1664, designed to introduce order and coherence into this administrative

disarray and confusion. Before I begin a discussion of S. 1664, let me say Mr. Chairman, that this question has been a matter of profound concern to me for almost as long as I have had the honor of serving in this House.

In January 1957 I introduced a bill to establish in the executive branch an Office of Administrative Practice headed by a Presidentially appointed Director. The duties of this Director would have included carrying on continuous studies, making recommendations concerning compliance by agencies with the procedures as set forth in the Administrative Procedure Act where the rights, duties, and privileges of persons were affected, and maintaining a continuing scrutiny of the rulemaking and adjudicatory functions of these agencies.

The Director would also have been empowered to coordinate agency activities to cut down delays, improve reporting, simplify and reduce the costs of records-keeping, and to act in other ways to make the administrative machinery smoother and more efficient.

This 1957 bill created a Legal Career Service and a Federal Grievance Committee. The purpose of the Committee was to review complaints against attorneys arising out of representation of participants before governmental agencies.

Because I believe this matter is so important, I reintroduced bills of this nature in the 86th Congress in 1959 and in the 87th Congress in 1961.

Again in this Congress, on January 24, 1963, I introduced a bill, H.R. 2662, creating an Office of Federal Administrative Practice under a Director appointed for 10 years. The purpose of this measure is very much the same as that of my earlier legislation—to make studies and recommendations, reduce delays, protect the rights and privileges of citizens, improve reporting, simplify records, correlate decisions, and so forth.

A related bill, H.R. 8046, which I introduced August 14, 1963, directs Federal agencies to file in the Federal Register descriptions of their organization, method of functioning, formal and informal procedures, and substantive rules and changes in these rules. It would require agency opinions, orders, and rules to be made available for public inspection.

I have discussed my past legislative efforts in some detail to provide certain background information which I think is a necessary prelude to the bill which we are considering today. S. 1664 is a bill calling for the creation of an Administrative Conference of the United States. I was pleased to introduce an identical measure in the House this session, and I have found that support for the legislation is virtually unanimous and wholly nonpartisan among lawyers, political scientists, administrators, and others representing a broad spectrum of practical experience in many fields.

Only the sort of Conference proposed in this bill can provide the overall view of administrative problems that is essential to their solution or mitigation. The separate agencies, each working alone and independently, cannot do it.

There must be a central coordinating agency that can see the entire picture,

serve as a clearinghouse for information and the exchange of ideas, and study the various problems and difficulties as a unit in their relationship to each other.

The Administrative Conference proposed in this bill is precisely the central coordinating agency that is needed.

The Conference membership would consist of executive branch officials most concerned with administrative problems and citizens from private life who could contribute a broad representation of views, expert knowledge, and diverse experience.

A Presidentially appointed chairman and members of the Conference and its subunit, the council, would determine agenda, select and investigate problem areas, disseminate information, and make recommendations to the President, to Congress, to the agencies, and to the Judicial Conference of the United States.

Only a very few employees would be needed to form the permanent staff of the Conference. The Conference members from Federal agencies would draw no additional compensation, and those from private life would receive only travel expenses and per diem.

The other body approved S. 1664, last October 30. Now, with time rapidly running out on the 88th Congress, it is our obligation to act promptly on this bill.

Oversight of the executive agencies is one of the most important constitutional responsibilities of Congress. By passing S. 1664 we would be fulfilling this responsibility in a truly productive and useful way.

Mr. WILLIS. Mr. Chairman, I have no further requests for time.

Mr. McCULLOCH. Mr. Chairman, I have no further requests for time.

The CHAIRMAN. All time has expired. The Clerk will read.

The Clerk read as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Administrative Conference Act".

Findings and declaration of policy

SEC. 2. The Congress finds and declares that—

(a) administration of regulatory and other statutes enacted by Congress in the public interest substantially affects large numbers of private individuals and many areas of business and economic activity;

(b) the protection of public and private interests requires continuing attention to the administrative procedure of Federal agencies to insure maximum efficiency and fairness in achieving statutory objectives;

(c) responsibility for assuring fair and efficient administrative procedure is inherent in the general responsibilities of officials appointed to administer Federal statutes;

(d) experience has demonstrated that cooperative effort among Federal officials, assisted by private citizens and others whose interest, competence, and objectivity enable them to make a unique contribution, can find solutions to complex problems and achieve substantial progress in improving the effectiveness of administrative procedure; and

(e) it is the purpose of this Act to provide suitable arrangements through which Federal agencies, assisted by outside experts, may cooperatively study mutual problems, exchange information, and develop recommendations for action by proper authorities

to the end that private rights may be fully protected and regulatory activities and other Federal responsibilities may be carried out expeditiously in the public interest.

Definitions

SEC. 3. As used in this Act—

(a) "Administrative program" includes any Federal function which involves protection of the public interest and the determination of rights, privileges, and obligations of private persons through rulemaking, adjudication, licensing, or investigation, as those terms are used in the Administrative Procedure Act (5 U.S.C. 1001-1011).

(b) "Administrative agency" means any authority as defined by section 2(a) of the Administrative Procedure Act (5 U.S.C. 1001(a)).

(c) "Administrative procedure" means procedure used in carrying out an administrative program and shall be broadly construed to include any aspect of agency organization, procedure, or management which may affect the equitable consideration of public and private interests, the fairness of agency decisions, the speed of agency action, and the relationship of operating methods to later judicial review, but shall not be construed to include the scope of agency responsibility as established by law or matters of substantive policy committed by law to agency discretion.

Administrative—Conference of the United States

SEC. 4. (a) There is hereby established the Administrative Conference of the United States (hereinafter referred to as the "Conference").

(b) The Conference shall be composed of—

(1) a full-time Chairman, who shall be appointed for a five-year term by the President, by and with the advice and consent of the Senate. The Chairman shall receive compensation at the highest rate established by law for the chairman of an independent regulatory board or commission, and may continue to serve until his successor has been appointed and has qualified;

(2) The chairman of each independent regulatory board or commission or a person designated by such board or commission;

(3) the head of each executive department or other administrative agency which is designated by the President, or a person designated by such head of a department or agency;

(4) when authorized by the Council, one or more appointees from any such board, commission, department, or agency, designated by the department or agency head or, in the case of a board or commission, by the head of such board or commission with the approval of the board or commission;

(5) persons appointed by the President to membership upon the Council hereinafter established who are not otherwise members of the Conference; and

(6) other members in such number as will assure full representation of the viewpoints of private citizens and the utilization of diverse experience, who shall be appointed by the Chairman, with the approval of the Council, for terms of two years. Members appointed by the Chairman shall be members of the practicing bar, scholars in the field of administrative law or government, or others specially informed by knowledge and experience with respect to Federal administrative procedure.

(c) Members of the Conference other than the Chairman shall receive no compensation for service, but members appointed from outside the Federal Government shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 73b-2) for persons serving without compensation.

Duties and powers of the Conference

SEC. 5. To carry out the purposes of this Act the Conference is authorized to—

(a) study the efficiency, adequacy, and fairness of the administrative procedure used by administrative agencies in carrying out administrative programs;

(b) make recommendations to administrative agencies, collectively or individually, and to the President, the Congress, or the Judicial Conference of the United States, as it deems appropriate;

(c) arrange for interchange among administrative agencies of information potentially useful in improving administrative procedure; and

(d) collect information and statistics from administrative agencies and publish such reports as it deems useful for evaluating and improving administrative procedure.

Organization of the Conference

SEC. 6. (a) The membership of the Conference meeting in plenary session shall constitute the Assembly of the Conference. The Assembly shall have ultimate authority over all activities of the Conference. Specifically, it shall have power to (1) adopt such recommendations as it deems appropriate for improving administrative procedure; *Provided*, That any member or members who disagree with a recommendation adopted by the Assembly shall be accorded the privilege of entering dissenting opinions and alternative proposals in the record of Conference proceedings, and the opinions and proposals so entered shall accompany the Conference recommendations in any publication or distribution thereof; and (2) adopt bylaws and regulations not inconsistent with this Act for carrying out the functions of the Conference, including the creation of such committees as it deems necessary for the conduct of studies and the development of recommendations for consideration by the Assembly.

(b) The Conference shall include a Council composed of the Chairman of the Conference, who shall be the Chairman of the Council, and ten other members appointed by the President, for three-year terms, except that the Council members initially appointed shall serve for one, two, or three years, as designated by the President, and each member may continue to serve until a successor is appointed. The Council shall have power to (1) determine the time and place of plenary sessions of the Conference and the agenda for such meetings and it shall call at least one plenary session each year; (2) propose bylaws and regulations, including rules of procedure and committee organization, for adoption by the Assembly; (3) make recommendations to the Conference or its committees upon any subject germane to the purposes of the Conference; (4) receive and consider reports and recommendations of committees of the Conference and transmit them to members of the Conference with the views and recommendations of the Council; (5) designate a member of the Council to preside at meetings of the Council in the absence or incapacity of the Chairman and Vice Chairman; (6) designate such additional officers of the Conference as it may deem desirable; (7) approve or revise the Chairman's budgetary proposals; and (8) exercise such other powers as may be delegated to it by the Assembly.

(c) The Chairman shall be the chief executive of the Conference. In that capacity he shall have power to (1) make inquiries into matters he deems important for Conference consideration, including matters proposed by persons inside or outside the Federal Government; (2) be the official spokesman for the Conference in relations with the several branches and agencies of the Federal Government and with interested orga-

nizations and individuals outside the Government, including responsibility for encouraging Federal agencies to effectuate the recommendations of the Conference; (3) request agency heads to provide information needed by the Conference, which information shall be supplied to the extent permitted by law; (4) recommend to the Council appropriate subjects for action by the Conference; (5) appoint, with the approval of the Council, members of committees authorized by the bylaws and regulations of the Conference; (6) prepare, for approval of the Council, estimates of the budgetary requirements of the Conference; (7) appoint employees, subject to the civil service and classification laws, define their duties and responsibilities, and direct and supervise their activities; (8) rent office space in the District of Columbia; (9) provide necessary services for the Assembly, the Council, and the committees of the Conference; (10) organize and direct studies ordered by the Assembly or the Council, utilizing from time to time, as appropriate, experts and consultants who may be employed as authorized by section 15 of the Administrative Expenses Act of 1946, as amended (5 U.S.C. 55a), but at rates for individuals not to exceed \$100 per diem; (11) upon request of the head of any agency, furnish assistance and advice on matters of administrative procedure; and (12) exercise such additional authority as may be delegated to him by the Council or the Assembly. The Chairman shall preside at meetings of the Council and at each plenary session of the Conference, to which he shall make a full report concerning the affairs of the Conference since the last preceding plenary session. The Chairman shall, on behalf of the Conference, transmit to the President and the Congress an annual report and such interim reports as he deems desirable; such reports shall set forth the compliance of the agencies with the recommendations of the Conference.

(d) The President may designate a member of the Council as Vice Chairman, who shall serve as Chairman in the event of a vacancy in that office or in the absence or incapacity of the Chairman.

(e) Each member of the Conference shall participate in his individual capacity and not as a representative of any governmental or nongovernmental organization. Members of the Conference who are not regular Federal officials or personnel shall be special Government employees for the purposes of sections 203, 205, 207, 208, and 209 of title 18, United States Code.

Appropriations

SEC. 7. There are hereby authorized to be appropriated such sums as may be necessary, to accomplish the purposes of this Act.

The CHAIRMAN. The Clerk will report the first committee amendment.

The Clerk read as follows:

Committee amendment: On page 3, line 10, change the period to a comma and add: except that it does not include any military, naval, or foreign affairs function of the United States.

The committee amendment was agreed to.

The CHAIRMAN. The Clerk will report the next committee amendment.

The Clerk read as follows:

Committee amendment: On page 4, line 6, change the period to a comma and add: which shall consist of not more than 91 nor fewer than 75 members appointed as set forth in subsection (b) of this section.

The committee amendment was agreed to.

The CHAIRMAN. The Clerk will report the next committee amendment.

The Clerk read as follows:

Committee amendment: On page 5, strike out lines 6 through 15 and insert in lieu thereof the following:

"(6) no more than 36 other members appointed by the Chairman, with the approval of the Council, for terms of two years: *Provided*, That the number of members appointed by the Chairman shall at no time be less than one-third nor more than two-fifths of the total number of members. Such members shall be selected in a manner which will provide broad representation of the views of private citizens and utilize diverse experience, and shall be members of the practicing bar, scholars in the field of administrative law or government, or others especially informed by knowledge and experience with respect to Federal administrative procedure."

The CHAIRMAN. The Clerk will report the next committee amendment.

The Clerk read as follows:

Committee amendment: On page 6 strike out lines 4 through 7, and reletter subsections "(c)" and "(d)" to "(b)" and "(c)" respectively.

On page 6, line 3, after "programs" change the semicolon to a comma and insert the following: "and make recommendations to administrative agencies, collectively or individually, and to the President, the Congress, or the Judicial Conference of the United States, in connection therewith, as it deems appropriate;"

The committee amendment was agreed to.

The CHAIRMAN. The Clerk will report the next committee amendment.

The Clerk read as follows:

Committee amendment: On page 7, line 11, after "President" insert the following: ", of whom not more than one-half shall be officials or personnel of Federal regulatory agencies or executive departments. Members other than the Chairman shall be appointed."

The committee amendment was agreed to.

The CHAIRMAN. The Clerk will report the next committee amendment.

The Clerk read as follows:

Committee amendment: On page 7, line 13, after "President" strike out ", and each member" and insert in lieu thereof: "*Provided*, That (1) the service of any member shall terminate whenever a change in his employment status would make him ineligible for Council membership under the conditions of his original appointment, and (2) except as provided in item (1), above, any member whose term has expired".

The amendment was agreed to.

The CHAIRMAN. The Clerk will report the next committee amendment.

The Clerk read as follows:

Committee amendment: On page 9, line 21, after "desirable" change the semicolon to a period and strike out the remainder of the sentence, lines 21 through 23.

The committee amendment was agreed to.

The CHAIRMAN. The Clerk will report the next committee amendment.

The Clerk read as follows:

Committee amendment: On page 10, strike out lines 3 through 9.

The committee amendment was agreed to.

The CHAIRMAN. The Clerk will report the next committee amendment.

The Clerk read as follows:

Committee amendment: On page 10, line 12, after "necessary" insert the following: ", not to exceed \$250,000."

The committee amendment was agreed to.

AMENDMENT OFFERED BY MR. GROSS

Mr. GROSS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. GROSS: On page 4, line 9, strike the words "five-year term" and insert the words "three-year term".

(Mr. GROSS asked and was given permission to revise and extend his remarks.)

Mr. GROSS. Mr. Chairman, I did not have an opportunity to do so previously, so I wish to respond briefly to the remarks of the gentleman from California [Mr. HOLIFIELD].

I agree substantially with what the gentleman said, but I should like to point out that there is no reason why the existing committees of the Congress cannot be apprised—and they are—of the difficulties which the business fraternity finds, for instance, under laws enacted by Congress and the rules and regulations issued thereunder.

I would also point out to the gentleman that we have a House Committee on Government Operations, with a number of subcommittees, upon which the taxpayers spend several hundred thousand dollars a year. That committee and its subcommittees are devoted to the very things we are talking about, and which would be of interest to this conference.

I join with the gentleman in the desire to resolve every possible difficulty which ought to be resolved in behalf of people who are laboring under a myriad of laws and rules and regulations. I have every sympathy for them.

However, I question, in the light of what has already transpired with respect to the temporary Administrative Conferences we have had and the failure of those conferences to come up with worthwhile recommendations, whether this will be any improvement or produce any better results than in the past. I am confident that the \$250,000 will be spent.

Mr. HOLIFIELD. Mr. Chairman, will the gentleman yield?

Mr. GROSS. I yield to the gentleman from California.

Mr. HOLIFIELD. I thank the gentleman for yielding.

Let me say this: It is true that the Committee on Government Operations occupies itself constantly with specific complaints which are in many instances referred to us by other Members of the Congress. We go in and investigate a specific complaint. However, this conference is supposed to go to the roots of the problem of why do they make these situations which cause the complaint rather than trying to correct a specific complaint. I will say the myriad of problems involved is much greater than the staff of the Committee on Govern-

ment Operations and its subcommittees can handle. I do not think the gentleman really understands the tremendous amount of cases which come before hearing examiners under the Administrative Procedure Act. It is somewhat beyond belief.

Mr. GROSS. Of course, the Government Operations Committee has to get at the root cause of the complaints that come in.

Mr. HOLIFIELD. Of a specific complaint, yes. However, we do not have a chance to look at the whole body of administrative law and just do not have the time or the staff to do it.

Mr. GROSS. Mr. Chairman, I must say a word or two about the amendment I have offered. I hope the committee will accept the amendment. It would reduce the term of the chairman to 3 years. Of course, he is still appointed by and with the advice and consent of the Senate. I only change the tenure of office. Why not appoint the Chairman for 3 years and come back at the end of that time and take another look at this proposition? Let us review it and see whether we are getting anything for the money we are expending. Let us see what we are getting for the \$250,000 a year. If it is worthwhile, I will be glad to support it, as I am sure every other Member of Congress will. The Lord knows I want to cut the inefficiencies in Government and I want to see the people who are in business and who are laboring under the laws, the procedures, and the regulations that are issued thereunder are able to cope with them. If this commission will do the job, then I am for it. Certainly, if it can save any money, it will be well worth it. But let us do this for 3 years and then come back and have another look at what has developed thereunder.

Mr. Chairman, I yield back the balance of my time.

Mr. WILLIS. Mr. Chairman, I rise in opposition to the amendment.

Let me say that I fully recognize the objective of the gentleman from Iowa and would normally perhaps agree with him. In the first place, I do not see much greater virtue between a term of 3 years, as he proposes, as against 5 years which the subcommittee and the full committee unanimously thought was wise.

There is another reason for that; that is, making the term 5 years instead of 3 years. I think it should convince my friend when he thinks about it.

Under the terms of the bill the term of office of the members of the Conference, which is to be composed of not less than 75 members, is 2 years. The term of office of the Council composed of 10 members, 5 from Government and 5 from non-Government, and a Chairman thereof, is 3 years. The term of office of the Chairman of the Conference is 5 years.

Now, why 5? You have to have continuity or else you will have a whole new body reelected with no continuity or with anyone remaining there to advise the newcomers as to what has been going on and so forth. The was the idea for

the difference in these terms. I understand that may not satisfy the gentleman, but the 5-year term was not put there arbitrarily. It was with the idea of continuity and, as I say, I see no greater virtue in 3 over 5 to begin with.

Mr. GROSS. Mr. Chairman, will the gentleman yield?

Mr. WILLIS. Yes, sir; I am glad to yield.

Mr. GROSS. We had in the Government, advising President Kennedy on administrative procedures, a gentleman—I shall not mention his name, he is now dead—who, had there been a permanent organization such as you are proposing to create here today, I would not have been surprised would have been designated the permanent chairman. Yet this gentleman who was advising the President on administrative procedure at that time did not find it convenient to pay his Federal income taxes.

I cannot think of any good reason why the proposed Chairman should have a 5-year tenure in a new and untried field. Let us give him 3 years and see how he performs.

Mr. WILLIS. I will say to the gentleman that the man who has been heading this Conference under Executive order, first under President Eisenhower and then under former President Kennedy, was Judge Prettyman.

Mr. GROSS. I understand; and I made no allusion to Judge Prettyman.

Mr. WILLIS. I know that; I caught that. The gentleman to whom he was referring was not Judge Prettyman.

Mr. HARRIS. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I certainly appreciate the concern of the gentleman from Iowa about continued conferences and permanent organizations in the Government. I would agree, as has been said here, that there are probably many that we could curtail and we should consider most carefully the question of the establishment of others. But this is one which I think has been so well justified here, we can say it is needed. As I have said innumerable times the large and powerful regulatory agencies of this Government have the economy of our country in the palm of their hand. If you do not think they do not control activities in the field of economics through the regulatory procedures of this country, you should survey the authority they have. Here we are trying to do something about it. We are trying to do something about inefficiency, and have been doing it over the years—inefficiency in the administrative agencies of this Government. We are trying to do something about the delays that we have discovered.

As has been stated here this afternoon there are cases that have been pending for years and years; someone mentioned 16 years. I can tell you of cases that that have been before the agency for years. That is because of inefficiencies. And we found in the investigation that we carried on for 4 years that the thing which brought about inefficiencies and delays were often ex parte contacts in the Government. We discovered that so many things resulted from ex parte contacts which should not have been per-

mitted, because there was no way for the people on the outside, as has been mentioned, to talk to members of the regulatory agencies that have quasi-judicial responsibilities in these fields and who should have been talked to about procedure in many instances.

This provides a method, a procedure for those in the agencies, the Chairmen of the various regulatory agencies of the Government or some one designated by them, those on the outside—perhaps a member of the Federal bar or a member of the American bar, or organizations or individuals on the outside who could become a member of this group, and have their meetings constantly in the Conference.

There they can discuss these matters of administrative procedures without being charged with ex parte proceedings with the regulatory commissioners who are serving in these responsible positions.

Mr. Chairman, if there is any one man who ought to know what he is doing, it is the chairman of this Conference. Every member of the independent regulatory agencies who is going to serve on this has an appointment for 5 to 7 years, everyone of them.

Now, Mr. Chairman, if that is the case, why should not the man who is going to have charge and whose responsibility it is to direct the discussion at these conferences of regulatory procedures not have the same kind of tenure of office in order that these matters may be developed with the people who are going to consider the recommendations made? I believe that is one way we can get at inefficiency and ex parte contacts, which we cannot permit, as well as the long delays that exist in these agencies in attending to the business of the people who have business before them.

Mr. Chairman, for that reason I believe the 5-year tenure of office should be the minimum.

I strongly support the action of this committee which gave such careful consideration to this legislation.

Mr. GROSS. Mr. Chairman, will the gentleman yield?

Mr. HARRIS. I yield to the gentleman from Iowa.

Mr. GROSS. This several years old case about which the gentleman speaks, insofar as this new Administrative Conference is concerned, could stay right in that department or agency for another 18 years. They could not force it out. All they can do is recommend to Congress that someone in Congress or someone dig it out. That is all they can do. If they cannot find an official of the department or agency to do it, they would have to come to Congress, where they now come.

Mr. HARRIS. The major responsibility is reviewing the procedures of these regulatory agencies. That is the purpose of it.

Mr. GROSS. All they do is make recommendations.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Iowa [Mr. Gross].

The question was taken; and on a division (demanded by Mr. Gross) there were—ayes 22, noes 51.

So the amendment was rejected.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker having resumed the chair, Mr. ELLIOTT, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee having had under consideration the bill (S. 1664) to provide for continuous improvement of the administrative procedure of Federal agencies by creating an Administrative Conference of the United States, and for other purposes, pursuant to House Resolution 824, he reported the bill back to the House with sundry amendments adopted by the Committee of the Whole.

The SPEAKER. Under the rule, the previous question is ordered.

Is a separate vote demanded on an amendment? If not, the Chair will put them en gros.

The amendments were agreed to.

The SPEAKER. The question is on the third reading of the bill.

The bill was ordered to be read a third time, and was read the third time.

The SPEAKER. The question is on the passage of the bill.

The bill was passed.

A motion to reconsider was laid on the table.

CONSTRUCTION OF HYDROELECTRIC PROJECTS ON THE COLORADO RIVER BELOW GLEN CANYON DAM

Mr. HARRIS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (S. 502) to preserve the jurisdiction of the Congress over construction of hydroelectric projects on the Colorado River below Glen Canyon Dam, to strike out all after the enacting clause, and insert the bill, H.R. 9752, which passed the House earlier today.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from Arkansas?

There was no objection.

The SPEAKER. The Clerk will report the amendment.

The Clerk read as follows:

Strike out all after the enacting clause of the bill, S. 502, and insert the provisions of the bill, H.R. 9752, as passed by the House.

The amendment was agreed to.

The bill was ordered to be read a third time, was read the third time and passed.

A similar House bill (H.R. 9752) was laid on the table.

A motion to reconsider was laid on the table.

INTERNATIONAL COMMISSION FOR SUPERVISION AND CONTROL OF LAOS

Mr. ELLIOTT. Mr. Speaker, by direction of the Committee on Rules I call up House Resolution 823 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

Resolved, That upon the adoption of this resolution it shall be in order to move that

the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (S. 1627) to enable the United States to contribute its share of the expenses of the International Commission for Supervision and Control in Laos as provided in article 18 of the protocol to the declaration on the neutrality of Laos. After general debate, which shall be confined to the bill and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Foreign Affairs, the bill shall be read for amendment under the five-minute rule. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

Mr. ELLIOTT. Mr. Speaker, I yield myself such time as I may require, after which I shall yield 30 minutes to the gentleman from Illinois [Mr. ANDERSON].

Mr. Speaker, House Resolution 823 makes in order the consideration of S. 1627, which is a bill to enable the United States to contribute its share of the expenses of the International Commission for Supervision and Control in Laos as provided in article 18 of the protocol to the declaration on the neutrality of Laos. The resolution provides an open rule with 1 hour of general debate.

S. 1627 authorizes the appropriation of such sums as may be necessary from time to time for the payment by the United States of its share of the costs of the operations of the International Commission for Supervision and Control in Laos (ICC) as provided in article 18 of the protocol to the declaration on the neutrality of Laos dated July 23, 1962. Under the terms of the protocol the U.S. share of the ICC costs is 17.6 percent. The budget of the ICC has not finally been agreed upon for the current fiscal year. The estimated figure is \$3,780,000 of which 17.6 percent would be about \$655,000.

Mr. Speaker, I urge the adoption of House Resolution 823.

Mr. ANDERSON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, House Resolution 823 makes in order consideration of S. 1627 which would authorize the appropriation of such sums as may be necessary for payment by the United States of its share of the costs of the operations of the International Commission for Supervision and Control in Laos. It is estimated that this involves an authorization of approximately \$655,000 or 17.6 percent of the sum which will be required to operate this Commission during the ensuing year. This bill has previously passed the other body and has been reported unanimously out of the House Committee on Foreign Affairs.

Mr. Speaker, our obligation to pay this amount for the operations of the ICC rests on the protocol to the Declaration on the Neutrality of Laos dated July 23, 1962. The United States was 1 of the 14 signatories to that agreement whereby among other things we undertook to share the costs of operations of the ICC.

Mr. Speaker, I have always maintained and continue to maintain that our Gov-

ernment committed an egregious foreign policy blunder when it entered into the Geneva Agreement. This abortive attempt to neutralize Laos by providing for a coalition government which included the Communist Pathet Lao has been a signal failure. Laos is and continues to be a staging area for North Vietnamese assaults on the Republic of South Vietnam. The unhappy experiences under the Geneva Agreement of 1962 should end for all time the illusion that still seems to exist in the minds of our State Department that it is possible to neutralize a country by including Communists as a part of the government of that country.

Mr. Speaker, the fact remains that we have made a commitment which is cognizable under international law to discharge a portion of the obligations incurred in the operation of the International Control Commission. This country has historically and traditionally stood by its agreements and has not followed the example of those nations who have consistently defaulted on their financial commitments. Our vote on this measure today must be judged in the light of the action that is scheduled to take place in the General Assembly of the United Nations when that body reconvenes some time in November.

Mr. Speaker, I have long been among those who believe that if the Soviet Union, or for that matter, any other country, persists in defaulting on its obligations to the United Nations that they should be barred from a vote in the General Assembly pursuant to the terms of article 19 of the charter. The Soviet Union and certain other nations who are now in default do have legal commitments cognizable under international law to meet a certain fixed share of the expenses of the United Nations. The failure to pay their assessed obligations should and must be dealt with firmly in the coming months. Therefore, Mr. Speaker, I believe that the United States in this instance and in this hour must before the world display its willingness to discharge the legal commitment which it made under the Geneva Agreement of 1962. I think that by so doing we will be in a much stronger position to urge upon the other members of the General Assembly of the United Nations that they invoke the provisions of article 19 against the U.S.S.R. if she persists in her default.

Mr. Speaker, at the same time I do want to make it abundantly clear that I do not and cannot condone the Geneva Agreement of July 23, 1962. Furthermore, I would make it completely clear that I do not agree with our policy of vacillation and irresolution with respect to Laos and southeast Asia generally. I hope that never again will this Government make the kind of mistake that it made in concluding the agreement referred to.

Mr. ELLIOTT. Mr. Speaker, I move the previous question on the resolution. The previous question was ordered.

The resolution was agreed to.

Mr. ZABLOCKI. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration

of the bill (S. 1627) to enable the United States to contribute its share of the expenses of the International Commission for Supervision and Control in Laos as provided in article 18 of the protocol to the declaration on the neutrality of Laos.

The motion was agreed to.

IN COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill S. 1627, with Mr. ELLIOTT in the chair.

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

The CHAIRMAN. Under the rule, the gentleman from Wisconsin [Mr. ZABLOCKI] will be recognized for 30 minutes and the gentleman from Michigan [Mr. BROOMFIELD] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Wisconsin [Mr. ZABLOCKI].

Mr. ZABLOCKI. Mr. Chairman, I yield myself 10 minutes.

[Mr. ZABLOCKI asked and was given permission to revise and extend his remarks.]

Mr. ZABLOCKI. Mr. Chairman, only last week Congress passed the southeast Asia resolution supporting and approving the actions of the President in resisting Communist military aggression in southeast Asia.

On June 2 the President summarized four simple propositions that are our policy in southeast Asia when he stated:

1. America keeps her word. Here as elsewhere, we must and shall honor our commitments.
2. The issue is the future of southeast Asia as a whole. A threat to any nation in that region is a threat to all, and a threat to us.
3. Our purpose is peace. We have no military, political, or territorial ambitions in the area.
4. This is not just a jungle war, but a struggle for freedom on every front of human activity.

Some may ask what is the connection between that joint resolution and the content of this bill.

I think these four points are the connection.

Some may ask why is this bill necessary? That is a reasonable and proper question that I shall try to answer.

It should be remembered that the resolution of last week did not rule out the desire of our Government to pursue every honorable method to bring peace to southeast Asia. This bill is a logical complement to that resolution and is evidence of the intent of the United States to use such machinery as is available to end the strife in war-torn Laos.

Let me briefly outline the events that have made this bill necessary. When Laos gained its independence in 1954, there was created an International Commission for Supervision and Control in Laos, popularly referred to as the ICC. It consisted of three Commissioners—an Indian, a Canadian, and a Pole—representing a neutral power, a pro-Western power, and a Communist power. Their responsibility was to assure that foreign intervention in Laos was brought to an end. By 1958 Laos felt confident that it

Digest of CONGRESSIONAL PROCEEDINGS

OFFICE OF
BUDGET AND FINANCE

(For information only;
should not be quoted
or cited)

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

UNITED STATES DEPARTMENT OF AGRICULTURE

Washington, D. C. 20250

Official business

Postage and fees paid

U. S. Department of Agriculture

Issued Aug. 18, 1964

For actions of Aug. 17, 1964

88th-2nd, No. 161

CONTENTS

Administrative law.....4	Expositions.....16	Meat imports.....25,38
Alaska.....15	Farm labor.....22	Milk program.....8
Animals.....39	Farm loans.....21	Minerals.....7,9,13
Appalachia.....10	Feed relief.....14	National parks.....21
Appropriations..5,10,23,24	Food-for-peace.....10	Nomination.....1
ASC committeemen.....8,17	Food grain.....8,18	Opinion poll.....36
Bank for cooperatives....8	Foreign aid.....2	Personnel.....11
Beef imports.....38	Forestry.....8,12	Poverty.....35,40
CCC Board.....1	Housing.....10	Public Law 480.....8,31
Coffee prices.....37	Humane treatment.....39	Reclamation.....9,29
Committees.....40	Irrigation.....9	Recreation.....6,32
Community development...20	Land and water conservation.....10	Stockpile.....19
Continuing appropriations.....23	Lands.....8,9,33	Tariffs.....26
Education.....10	Legislative program.....10	Vehicles.....3
Electrification.....28	Loans.....30	Watersheds.....8
		Wilderness.....10,27,34

HIGHLIGHTS: Senate committee voted to report Public Law 480 bill. Senate committee reported bill to extend Armed Forces special milk program. Senate committee voted to report Schnittker nomination as member of CCC Board. Senate debated foreign-aid authorization bill. House failed to pass Public Law 480 bill under suspension of the rules. House passed farm labor contractor registration bill. House received conference report on meat-import bill. Rep. Dorn opposed land-water conservation fund bill. House conferees agreed to file report on wilderness bill. Rep. May described consumers interest in beef imports. Rep. Ayres criticized "political implications" of poverty bill.

SENATE

- 1. NOMINATION.** The Agriculture and Forestry Committee voted to report (but did not actually report) the nomination of John A. Schnittker as a member of the CCC Board. p. D704
- 2. FOREIGN AID.** Continued debate on H. R. 11380, the foreign-aid authorization bill. pp. 19187-97, 19203-212, 19227-33, 19239-40, 19246
- 3. VEHICLES.** Passed without amendment H. R. 1341, to require passenger-carrying motor vehicles purchased for use by the Government to meet certain passenger safety standards. This bill will now be sent to the President. pp. 19220-1

4. ADMINISTRATIVE LAW. Concurred in the House amendment to S. 1664, to provide for continuous improvement of the administrative procedure of Federal agencies by creating an Administrative Conference of the U. S. This bill will now be sent to the President. p. 19221
5. LABOR AND HEALTH, EDUCATION, AND WELFARE APPROPRIATION BILL, 1965. The Appropriations Committee reported with amendments this bill, H. R. 10809 (S. Rept. 1460). p. 19170
6. RECREATION. The Interior and Insular Affairs Committee reported without amendment H. R. 8135, to provide for establishment and administration of public recreational facilities at the Sanford Reservoir area, Canadian River project, Tex. (S. Rept. 1461). p. 19169
7. MINERAL LEASES. The Interior and Insular Affairs Committee reported without amendment S. 2500, to promote the development of phosphate on public lands (S. Rept. 1459). p. 19170
8. THE AGRICULTURE AND FORESTRY COMMITTEE reported without amendment the following bills: H. R. 7588, to provide for enforcement of rules and regulations for the protection, development, and administration of the national forests and national grasslands (S. Rept. 1447); H. R. 10069, to authorize the exchange of lands adjacent to the Lassen National Forest, Calif. (S. Rept. 1448); S. 2634, to permit purchase of processed food grain products in addition to purchase of flour and cornmeal and donating the same for certain domestic and foreign purposes (S. Rept. 1446); H. R. 9747, to extend the special milk programs for the Armed Forces and veterans hospitals (S. Rept. 1454); H. R. 10419, to amend further the Farm Credit Act of 1933 to provide that part of the patronage refunds paid by a bank for cooperatives shall be in money instead of class C stock after the bank becomes subject to Federal income tax (S. Rept. 1453); and H. R. 4242, to provide for the release and transfer of all right, title, and interest of the U. S. in and to certain tracts of land in Pender County, N. C. (S. Rept. 1452). p. 19170
The following bills were reported with amendment: H. R. 6601, to authorize the Secretary of Agriculture to sell certain land in Grand Junction, Colo. (S. Rept. 1449); S. 1253, to amend section 8(b) of the Soil Conservation and Domestic Allotment Act regarding election and terms of ASC committeemen (S. Rept. 1451); H. R. 1642, to provide for the sale of the U. S. Animal Quarantine Station, Clifton, N. J., to the city of Clifton and to provide for establishment of a new station (S. Rept. 1450). p. 19170
The Committee ordered reported (but did not actually report) S. 2687, to extend for 2 years Public Law 480, and approved 17 watershed projects. p. D704
9. THE INTERIOR AND INSULAR AFFAIRS COMMITTEE voted to report (but did not actually report) the following bills: S. 2327, increasing the limit on acreage of coal leases that may be held by any person, association, or corporation in a State (amended); S. 883, to amend the Mineral Leasing Act to authorize geothermal steam leases (amended); S. J. Res. 6, to cancel unpaid reimbursable construction costs of the Wind River irrigation project, Wyo., chargeable against certain non-Indian lands; S. 3053, to increase authorizations for construction of the Riverton Federal reclamation project; S. 770, providing for construction and operation of the Savery-Pot Hook Federal reclamation project, Colo. and Wyo. (amended); H. R. 130, providing for payment of compensation, including severance damages, for rights-of-way acquired by the U. S. in connection with reclamation projects begun after January 1, 1961. p. D705
The "Daily Digest" states that the Committee also reconsidered its action of July 31, when it voted to report H. R. 5498, authorizing sale of public lands not needed for Federal program requirements, agreed to amend the bill, and again voted to report (but did not actually report) the bill. p. D705

would not encroach on the area of State responsibility for the establishment of minimum safety requirements for private passenger automobiles.

Many safety features have appeared to have little or no appeal in promoting sales. By establishing basic and reasonable passenger safety standards which must be met by Government passenger-carrying motor vehicles, as provided in this legislation, the public may be encouraged to accept these features, and the industry relieved of some of the burden of both developing safety features and educating the public as to their value.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

The PRESIDING OFFICER laid before the Senate the amendments of the House of Representatives to the bill (S. 1664) to provide for continuous improvement of the administrative procedure of Federal agencies by creating an Administrative Conference of the United States, and for other purposes, which were, on page 3, line 10, after "(5 U.S.C. 1001-1011)" insert ", except that it does not include any military, naval, or foreign affairs function of the United States"; on page 4, line 6, after "Conference)" insert ", which shall consist of not more than ninety-one nor fewer than seventy-five members appointed as set forth in subsection (b) of this section"; on page 5, strike out lines 6 through 15, inclusive, and insert:

(6) no more than thirty-six other members appointed by the Chairman, with the approval of the Council, for terms of two years: *Provided, That* the number of members appointed by the Chairman shall at no time be less than one-third nor more than two-fifths of the total number of members. Such members shall be selected in a manner which will provide broad representation of the views of private citizens and utilize diverse experience, and shall be members of the practicing bar, scholars in the field of administrative law or government, or others especially informed by knowledge and experience with respect to Federal administrative procedure.

On page 6, line 3, after "programs" insert ", and make recommendations to administrative agencies, collectively or individually, and to the President, the Congress, or the Judicial Conference of the United States, in connection therewith, as it deems appropriate"; on page 6, strike out lines 4 through 7, inclusive; on page 6, line 8, strike out "(c)" and insert "(b)"; on page 6, line 11, strike out "(d)" and insert "(c)"; on page 7, line 11, after "President" insert ", of whom not more than one-half shall be officials or personnel of Federal regulatory agencies or executive departments. Members other than the Chairman shall be appointed"; on page 7, line 13, strike out ", and each member" and insert ": *Provided, That* (1) the service of any member shall terminate whenever a change in his employment status would make him ineligible for Council membership under the conditions of his original appointment, and (2) except as provided in item (1), above, any member whose term has expired"; on page 9, line 21, strike out all after "desirable" down through and including "Conference" in line 23; on page 10, strike out

lines 3 through 9, inclusive, and on page 10, line 12, after "necessary" insert ", not to exceed \$250,000,".

Mr. MANSFIELD. Mr. President, will the Senator from Missouri [Mr. LONG] yield to me to suggest the absence of a quorum, provided that in doing so he shall not lose his right to the floor?

Mr. LONG of Missouri. I am glad to yield to the Senator from Montana.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DIRKSEN. Mr. President, I ask unanimous consent that the order for the quorum call may be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LONG of Missouri. Mr. President, this is the administrative conference bill. I believe the amendments of the House should be accepted by the Senate.

There is one item to which I invite the attention of Senators so that the RECORD may be clear: There is authorized to be appropriated annually, \$250,000. Standing alone, it might be thought, perhaps, to indicate that a new authorization would be needed each year. That is not the case, as shown by the House report, 1565, of the 88th Congress, 2d session, which especially states that the House amendments would limit the amount of annual appropriations to the \$250,000. To save possible confusion in the future, the facts should be clarified to that extent.

One of the other amendments sets definite upper and lower limits on the number of members of the conference—a maximum of 91 and a minimum of 75—and provides that the number of government participants shall constitute one-third or two-fifths of the total number, and that half of the members of the council shall be nongovernmental.

Mr. President, I move that the Senate concur in the House amendments to Senate bill 1664.

Mr. DIRKSEN. Mr. President, while there is some difference between the House and the Senate with respect to this measure, and while I cannot say that I was entirely happy about concurring in all the House amendments, since we thought there was a predominance of people from the Government who were going to sit in on this conference, I had hoped that some substantial portion of the Senate proposals might be maintained. However, action should be taken notwithstanding. Therefore, I have no objection to the House amendments.

Mr. LONG of Missouri. Mr. President, I thank my distinguished friend, the junior Senator from Illinois. I express my appreciation to him for the cooperation and help which he and other staff members have rendered in the matter.

Mr. DIRKSEN. Mr. President, I think the staff of the subcommittee is entitled to a high order of praise. This is one of those rather dry and academic things that sometimes taxes even the mind of a lawyer.

The staff members have been truly

diligent in bringing this difficult task to fruition. I believe we should thank Mr. Fensterwald, who used to be on another subcommittee staff, and Mr. Kennedy, my own assistant, who have labored long and earnestly on this very abstruse subject.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Missouri [Mr. LONG] that the Senate concur in the amendments of the House.

The motion was agreed to.

Mr. LONG of Missouri. Mr. President, I move that the vote by which the House amendments were concurred in be reconsidered.

Mr. DIRKSEN. Mr. President, I move to lay the motion to reconsider on the table.

The motion to lay on the table was agreed to.

Mr. DIRKSEN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DIRKSEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE CANADIAN AUTOMOTIVE EXPORT PROGRAM

Mr. HART. Mr. President, I should like to discuss a subject which may appear to have interest largely or only to the automobile and the automotive supply industries in the regions of the country in which they are principally located. However, I feel that after one has had an opportunity to analyze the problem that I now choose to bring to the attention of the Senate and the country, it will be agreed that it raises a principle and that it affects an issue which can and should cause concern wherever we are located and whatever we may be engaged in.

Recently, substantial concern has been expressed in Congress and elsewhere regarding the potential effects on the U.S. economy of the Canadian Order in Council of November 1963 providing for the remission of certain import duties to Canadian manufacturers who succeed in increasing their automotive exports.

This Canadian program, which is designed primarily to increase Canada's automotive sales to the United States, is understandably regarded by some U.S. producers of automotive parts as a grave threat to their business. They contend that substantial numbers of U.S. workers have already lost jobs and that others may be threatened with the loss of their jobs. None of us is insensitive to the potential human costs involved in this situation. Moreover, our balance-of-payments problems will plainly be aggravated to some extent by the Canadian program if the Canadian program achieves its basic purpose of increased Canadian automotive exports.

At the same time, we must in fairness recognize also that the Canadian Order in Council derives from a genuine economic problem in that country. Over

the past decade Canada has been averaging a chronic deficit on goods and services amounting to approximately a billion dollars annually. This deficit imposes a very heavy burden on Canada's slender foreign exchange resources. Indeed, Canada's foreign exchange position is much less secure than our own, though obviously the demands are less, and it was for this reason that Canada was quickly exempted by the Treasury Department from the effects of the interest equalization tax after it was announced in July 1963.

Automotive trade is a major element in the Canadian goods and services deficit. In 1963, for example, our sales of automotive products to Canada amounted to over half a billion dollars, while Canada sold us less than \$30 million worth of automotive parts. In short, the deficit on automotive trade represented about one-half of Canada's total deficit on goods and services. It was to close this gap that the Order-in-Council was proclaimed.

Mr. President, from even this brief summary it must be apparent that the situation here at issue is not one that lends itself to easy solution. However, because the entire issue currently is being reviewed by the proper authorities under applicable U.S. law and because efforts also are going forward to achieve an equitable solution through diplomatic means, it would be well for all who are interested in a reasonable outcome to exercise restraint in discussions of the problem. In my judgment, any other course of conduct can only induce rigidity on both sides and jeopardize a just and workable solution.

It should be remembered that a unilateral decision on our part to nullify the Canadian Order-in-Council through tariff mechanisms may achieve undesirable results. Under existing international trade rules, there are retributory steps which Canadian legally could take to alter the balance on automotive trade, and these, indeed, might prove much less palatable than the duty remission program.

One such possibility would be an increase in the so-called local content requirement for vehicles sold in the Canadian market. At present, Canada effectively requires 60 percent local content on passenger cars by assessing economic penalties against firms which fail to achieve such Canadian content. The minimum could be raised to 80 or even 90 percent; it would not be unprecedented—Australia and Brazil are among the countries which already require local content in excess of 90 percent.

Mr. President, such an action, if substituted for the remission of duties approach, might preserve from Canadian competition the automobile parts markets normally served by some U.S. parts manufacturers. But, at the same time, such an action would deny other U.S. automotive parts and automobile manufacturers a great part of the half-billion dollar Canadian market which they now enjoy. Although the losses would be distributed among a different group of firms and workers, the resulting dislocations could far exceed those in prospect

because of the duty remission program. By the same token, action to increase the percentage of Canadian content probably would also result in the worsening of our own balance-of-payments deficit.

Moreover, retaliatory moods have a dangerous way of stoking themselves. A Chinese proverb wisely counsels: "When you set out for revenge, first dig two graves." Unless the current situation is handled constructively and patiently on both sides of the border, it could provoke a mutually damaging trade war which would gravely threaten the thriving and vital economic relationship between the United States and Canada.

There is too much at stake, Mr. President, both economically and politically, for rashness or recriminations on this issue. Two-way trade between the United States and Canada in 1963 amounted to nearly \$8 billion. Not only is the annual volume of trade unrivaled by any other pair of trading partners in the world, but it also represents more than one-fifth of total U.S. foreign trade.

Our political and diplomatic involvement with Canada is equally great. We share a common language, a common heritage, and a 3,000-mile border. Too often we take these things for granted, regarding them as immutable facts of life. But even the warmest and most lasting friendships can be strained by insensitivity to one another's honorable interests.

Accordingly, it seems to me, Mr. President, that the current situation might benefit most from thoughtful consideration of the various alternatives—none of them wholly desirable—that face us in this situation. The Canadian Order-in-Council is currently being challenged under U.S. law in a Treasury Department proceeding. For those who are unfamiliar with the case, it may be well to review briefly what this proceeding is about.

The Canadian Order in Council provides an incentive for Canadian manufacturers who are successful in increasing their automotive exports in the form of a remission of duties paid on automotive imports.

This incentive plan has been challenged under the U.S. countervailing duty statute. The statute provides that if a foreign government pays a bounty or grant on the manufacture, production, or export of any article imported into the United States, the Treasury Department shall impose duties, in addition to the regular tariffs, equal to the net amount of the subsidy. The key question is whether the Canadian incentive plan is a bounty or grant within the meaning of the statute.

The position of the opposing interests is clear. Some U.S. parts manufacturers contend that the Canadian program is such a bounty and grant and that the Treasury Department is obliged to impose countervailing duties to negate the program's effect. On the other hand, it has been argued that the Canadian incentive plan resembles our own duty drawback arrangement under which duties paid on imports are remitted when the same or similar articles are later ex-

ported. It seems reasonably clear that drawback arrangements are not forbidden by the countervailing duty statute.

The issue obviously is one of legal interpretation, and it is now before the duly established authority. The interested parties have had an opportunity to file briefs, and the Treasury Department will reach a decision. That decision can be, and no doubt will be, appealed to the courts, where the contending parties will have further opportunity to have the matter fully examined and adjudicated. Thus, the legal question will be settled through due process of law, which, in my judgment, is the just and reasonable way to settle that aspect of the problem.

However, Mr. President, this need not be purely a matter of law. I hope and expect that United States and Canadian representatives will urgently and promptly seek to reach agreement on a program which recognizes both the need of the Canadian Government to find a solution for its vexing goods and services deficit and the interest of U.S. workers and U.S. businessmen in avoiding, insofar as possible, discriminations against U.S. production.

Mr. President, I do not want this explanation of the issues to be construed as an endorsement for the Canadian Order in Council. On the contrary, I believe that such unilateral action by Canada was most unfortunate. But I am confident, that, with calmness and good will on both sides, it is possible for our two countries to sit down across a table and work out a practical solution to what, after all, is a joint problem. Surely both parties recognize that their mutual interests will be served ultimately by a pattern of freer trade and increased economic interdependence—and not by restrictions piled on restrictions for momentary advantage.

I hope that those who read the RECORD will agree with the comment I made as I opened these remarks—that it is possible to view this as merely the expression of concern about an automotive import-export problem that affects jobs in only the automotive industry and is of concern only to those regions where such employment is concentrated.

However, in truth, it points up a problem which should be, and I am confident will be, regarded as of concern and continuing interest to persons in all parts of the country, in both business and labor, and surely to students of economic development in this country.

FLYING OF FRESH BREAD BY AIR FORCE TO PAKISTAN

Mr. WILLIAMS of Delaware. Mr. President, fresh bread is an important ingredient in anyone's diet, and we all recognize that as Americans we can be excused if we all feel that bread baked in America is better than the same bread would be if baked with American flour in a foreign country; however, I think that the Defense Department is carrying this chamber of commerce propaganda just a little too far when they start flying fresh bread from the United States to Pakistan, particularly when they continue such an operation for several



Public Law 88-499
88th Congress, S. 1664
August 30, 1964

An Act

78 STAT. 615.

To provide for continuous improvement of the administrative procedure of Federal agencies by creating an Administrative Conference of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Administrative Conference Act".

Administrative
Conference Act.

FINDINGS AND DECLARATION OF POLICY

SEC. 2. The Congress finds and declares that—

(a) administration of regulatory and other statutes enacted by Congress in the public interest substantially affects large numbers of private individuals and many areas of business and economic activity;

(b) the protection of public and private interests requires continuing attention to the administrative procedure of Federal agencies to insure maximum efficiency and fairness in achieving statutory objectives;

(c) responsibility for assuring fair and efficient administrative procedure is inherent in the general responsibilities of officials appointed to administer Federal statutes;

(d) experience has demonstrated that cooperative effort among Federal officials, assisted by private citizens and others whose interest, competence, and objectivity enable them to make a unique contribution, can find solutions to complex problems and achieve substantial progress in improving the effectiveness of administrative procedure; and

(e) it is the purpose of this Act to provide suitable arrangements through which Federal agencies, assisted by outside experts, may cooperatively study mutual problems, exchange information, and develop recommendations for action by proper authorities to the end that private rights may be fully protected and regulatory activities and other Federal responsibilities may be carried out expeditiously in the public interest.

DEFINITIONS

SEC. 3. As used in this Act—

(a) "Administrative program" includes any Federal function which involves protection of the public interest and the determination of rights, privileges, and obligations of private persons through rulemaking, adjudication, licensing or investigation, as those terms are used in the Administrative Procedure Act (5 U.S.C. 1001-1011), except that it does not include any military, naval, or foreign affairs function of the United States. 60 Stat. 237.

(b) "Administrative agency" means any authority as defined by section 2(a) of the Administrative Procedure Act (5 U.S.C. 1001(a)).

(c) "Administrative procedure" means procedure used in carrying out an administrative program and shall be broadly construed to include any aspect of agency organization, procedure, or management which may affect the equitable consideration of public and private interests, the fairness of agency decisions, the speed of agency action, and the relationship of operating methods to later judicial review, but shall not be construed to include the scope of agency responsibility as established by law or matters of substantive policy committed by law to agency discretion.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

SEC. 4. (a) There is hereby established the Administrative Conference of the United States (hereinafter referred to as the "Conference"), which shall consist of not more than ninety-one nor fewer than seventy-five members appointed as set forth in subsection (b) of this section.

(b) The Conference shall be composed of—

(1) a full-time Chairman, who shall be appointed for a five-year term by the President, by and with the advice and consent of the Senate. The Chairman shall receive compensation at the highest rate established by law for the chairman of an independent regulatory board or commission, and may continue to serve until his successor has been appointed and has qualified;

(2) the chairman of each independent regulatory board or commission or a person designated by such board or commission;

(3) the head of each executive department or other administrative agency which is designated by the President, or a person designated by such head of a department or agency;

(4) when authorized by the Council, one or more appointees from any such board, commission, department, or agency, designated by the department or agency head or, in the case of a board or commission, by the head of such board or commission with the approval of the board or commission;

(5) persons appointed by the President to membership upon the Council hereinafter established who are not otherwise members of the Conference; and

(6) no more than thirty-six other members appointed by the Chairman, with the approval of the Council, for terms of two years: *Provided*, That the number of members appointed by the Chairman shall at no time be less than one-third nor more than two-fifths of the total number of members. Such members shall be selected in a manner which will provide broad representation of the views of private citizens and utilize diverse experience, and shall be members of the practicing bar, scholars in the field of administrative law or government, or others especially informed by knowledge and experience with respect to Federal administrative procedure.

(c) Members of the Conference other than the Chairman shall receive no compensation for service, but members appointed from outside the Federal Government shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 73b-2) for persons serving without compensation.

DUTIES AND POWERS OF THE CONFERENCE

SEC. 5. To carry out the purposes of this Act the Conference is authorized to—

(a) study the efficiency, adequacy, and fairness of the administrative procedure used by administrative agencies in carrying out administrative programs, and make recommendations to administrative agencies, collectively or individually, and to the President, the Congress, or the Judicial Conference of the United States, in connection therewith, as it deems appropriate;

(b) arrange for interchange among administrative agencies of information potentially useful in improving administrative procedure; and

(c) collect information and statistics from administrative agencies and publish such reports as it deems useful for evaluating and improving administrative procedure.

ORGANIZATION OF THE CONFERENCE

SEC. 6. (a) The membership of the Conference meeting in plenary session shall constitute the Assembly of the Conference. The Assembly shall have ultimate authority over all activities of the Conference. Specifically, it shall have power to (1) adopt such recommendations as it deems appropriate for improving administrative procedure: *Provided*, That any member or members who disagree with a recommendation adopted by the Assembly shall be accorded the privilege of entering dissenting opinions and alternative proposals in the record of Conference proceedings, and the opinions and proposals so entered shall accompany the Conference recommendation in any publication or distribution thereof; and (2) adopt bylaws and regulations not inconsistent with this Act for carrying out the functions of the Conference, including the creation of such committees as it deems necessary for the conduct of studies and the development of recommendations for consideration by the Assembly.

Dissenting
opinions.

(b) The Conference shall include a Council composed of the Chairman of the Conference, who shall be the Chairman of the Council, and ten other members appointed by the President, of whom not more than one-half shall be officials or personnel of Federal regulatory agencies or executive departments. Members other than the Chairman shall be appointed for three-year terms, except that the Council members initially appointed shall serve for one, two, or three years, as designated by the President: *Provided*, That (1) the service of any member shall terminate whenever a change in his employment status would make him ineligible for Council membership under the conditions of his original appointment, and (2) except as provided in item (1), above, any member whose term has expired may continue to serve until a successor is appointed. The Council shall have power to (1) determine the time and place of plenary sessions of the Conference and the agenda for such meetings and it shall call at least one plenary session each year; (2) propose bylaws and regulations, including rules of procedure and committee organization, for adoption by the Assembly; (3) make recommendations to the Conference or its committees upon any subject germane to the purposes of the Conference; (4) receive and consider reports and recommendations of committees of the Conference and transmit them to members of the Conference with the views and recommendations of the Council; (5) designate a member of the Council to preside at meetings of the Council in the absence or incapacity of the Chairman and Vice Chairman; (6) designate such additional officers of the Conference as it may deem desirable; (7) approve or revise the Chairman's budgetary proposals; and (8) exercise such other powers as may be delegated to it by the Assembly.

Council.

(c) The Chairman shall be the chief executive of the Conference. In that capacity he shall have power to (1) make inquiries into matters he deems important for Conference consideration, including matters proposed by persons inside or outside the Federal Government; (2) be the official spokesman for the Conference in relations with the several branches and agencies of the Federal Government and with interested organizations and individuals outside the Government, including responsibility for encouraging Federal agencies to effectuate the recommendations of the Conference; (3) request agency heads to provide information needed by the Conference, which information shall be supplied to the extent permitted by law; (4) recommend to the Council appropriate subjects for action by the Conference; (5) appoint, with the approval of the Council, members of committees authorized by the bylaws and regulations of the Conference; (6) pre-

60 Stat. 810.

Report to President and Congress.

Vice Chairman.

pare, for approval of the Council, estimates of the budgetary requirements of the Conference; (7) appoint employees, subject to the civil service and classification laws, define their duties and responsibilities, and direct and supervise their activities; (8) rent office space in the District of Columbia; (9) provide necessary services for the Assembly, the Council, and the committees of the Conference; (10) organize and direct studies ordered by the Assembly or the Council, utilizing from time to time, as appropriate, experts and consultants who may be employed as authorized by section 15 of the Administrative Expenses Act of 1946, as amended (5 U.S.C. 55a), but at rates for individuals not to exceed \$100 per diem; (11) upon request of the head of any agency, furnish assistance and advice on matters of administrative procedure; and (12) exercise such additional authority as may be delegated to him by the Council or the Assembly. The Chairman shall preside at meetings of the Council and at each plenary session of the Conference, to which he shall make a full report concerning the affairs of the Conference since the last preceding plenary session. The Chairman shall, on behalf of the Conference, transmit to the President and the Congress an annual report and such interim reports as he deems desirable.

(d) The President may designate a member of the Council as Vice Chairman, who shall serve as Chairman in the event of a vacancy in that office or in the absence or incapacity of the Chairman.

APPROPRIATIONS

SEC. 7. There are hereby authorized to be appropriated such sums as may be necessary, not to exceed \$250,000, to accomplish the purposes of this Act.

Approved August 30, 1964.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 1565 (Comm. on the Judiciary).

SENATE REPORT No. 621 (Comm. on the Judiciary).

CONGRESSIONAL RECORD:

Vol. 109 (1963): Oct. 30, considered and passed Senate.

Vol. 110 (1964): Aug. 12, considered and passed House, amended.
Aug. 17, Senate concurred in House amendments.